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—"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

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SATURDAY, NOVEMBER 7, 1846

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitanus.”

HORAT.

RESTORING ARREST ON MESNE PROCESS.

THE Bill introduced by Messrs. Warburton and Leader into the House of Commons at the close of the last session of parliament, “to restore arrest on mesne process in civil actions, under certain limitations,” the provisions of which our readers had an early opportunity of perusing,^a is in many respects deserving of grave consideration. That a measure containing such provisions should emanate from gentlemen who are *par excellence* political economists, and one of whom is a representative of the large and popular constituency of Westminster, is itself sufficiently curious. But that, after arrest on mesne process has been abolished for eight years, and the principle extended to arrest on final process for debts under 20*l.*, only two years since, and again further extended, as we shall presently show, by the Small Debts Act of last session, an appeal should be made to the deliberative judgment of the legislature to retrace its steps and go back to the point we stated from in 1838, if it be the triumph of good sense, is also the reproach of legislative ignorance and temerity! In vain were the government of that day reminded, that the law of arrest was no sudden experiment, but had grown up and extended itself gradually with the increase of trade and commerce. Vainly were they warned, that the effects of the law were partially and unfavourably considered when viewed in regard to the instances in which arrest actually took place, as thousands who were never arrested avoided incurring obliga-

tions they could not fulfil, and paid the debts they had incurred, from the apprehension of arrest. Vainly was it also suggested, that the abuses which had crept into the practice were not necessarily consequent upon the law, and might be remedied without depriving creditors of the protection they had theretofore enjoyed. That sympathy so readily lavished on the profligate and the clamorous—so often denied to patient industry and endurance—was irresistibly excited in favour of the debtor. Noble and learned lords, who loved popularity and knew how easily it was to be acquired by heading a movement, joined in the outcry against the barbarity and inhumanity of incarcerating persons for debt. The few who dared to differ from those who guided what was called “public opinion,” were sneered at and stigmatised as the advocates of sheriffs, bailiffs, and the patrons of lock-up houses. The debtor was assumed to be in every case an injured innocent, and the creditor an unrelenting tyrant. The law for abolishing arrest on mesne process passed, we had almost said, by acclamation!

When the statute 1 & 2 Vict. c. 110, came into operation, however, it was found not to be quite so efficacious as those who had been most anxious for its enactment anticipated. It was true it could no longer be said, that a person charged upon the mere oath of a plaintiff, and before a competent tribunal had decided that he owed any debt, was consigned to a debtor’s prison; but it was found that the evil hour was only postponed. Judgment was obtained, after a course of proceeding necessarily more or less expensive, and the debtor was taken in execution upon final process, instead of being arrested on mesne process. Those who conceived that

^a 32 L. O. 526.

debtors unable or unwilling to meet their obligations ought not to be harassed or inconvenienced, were disappointed but not disheartened by the result of the act of 1838.

The agitation against arrest on *final* process commenced. All the ordinary machinery was employed, amongst the rest a commission was appointed to inquire into the law of arrest, and in 1840 the commissioners reported as follows:—"Arrest for debt being abolished on mesne process, we turned our attention to arrest on final process, and hence arrived at the conclusion that the objections made to the former apply with equal force to the latter; and that out of 3,906 persons imprisoned from November, 1838, to December, 1839, there were 3,544 who in good policy ought never to have been arrested at all." Fortified by this report, the adversaries of arrest for debt were for a bold and sweeping measure of abolition, but fortunately those who were at that time in office suspected that the anxiety evinced on the subject was confined to a limited number of persons, all of whom were not wholly disinterested, and it was suggested that the principle of abolition might with greater safety be carried out gradually.

As a first instalment, the act 5 & 6 Vict. c. 116, "for the relief of insolvent debtors," passed in the session of 1842, under which the commissioners of bankrupt were authorised to grant the same protection and discharge to an insolvent who had never been in prison as the insolvent commissioners are authorised to grant to petitioners who are in actual custody. This statute, however, only applied to the case where a party being at large gave the notice required by the act: if he were in custody, his remedy still was by application to the Court for the Relief of Insolvent Debtors.^b This restriction, however, was removed by the act 7 & 8 Vict. c. 96, under which judgment debtors in execution were set at liberty upon presenting a petition for protection from process to any Court of Bankruptcy, without any notice to the detaining or other creditors. Under the convenient provisions of this act, a considerable number of persons were enabled to avail themselves of the advantages of international intercourse by visiting foreign countries, and of course neglected to appear on the day appointed for the hearing of their respective petitions.

The wholesale discharge of debtors from custody upon their own mere application, and without any notice to their creditors, or any previous investigation as to their circumstances, excited at first surprise, then astonishment, and ultimately alarm and indignation. The system of indiscriminate discharge without notice, as respects debtors in execution on judgments above 20*l*, continued, however, only from the 9th of August, 1844, (when the act 7 & 8 Vict. obtained the royal assent,) until the 21st December, 1844, when the bankrupt commissioners promulgated a series of rules and orders, one rule being:—"That where a petitioner for protection from process shall be a prisoner in execution upon any judgment obtained in any action for the recovery of any debt, such petitioner shall, before the granting of the interim order for protection, give such notice to the detaining creditor under such execution, as the court in which the petition is prosecuted shall direct, so that such creditor may be heard against the granting of the interim order and the discharge of such petitioner out of custody." As regards judgment debtors in execution for sums not exceeding 20*l*, the regulations made by the commissioners of the Court of Bankruptcy were wholly inoperative. The 57th section of the stat. 7 & 8 Vict. c. 96, expressly enacted, that after the passing of this act no person should be taken or charged in execution upon any judgment, obtained in any action for the recovery of any debt, wherein the sum recovered should not exceed 20*l*, exclusive of costs, and this numerous class of debtors were consequently relieved from all apprehension of arrest. The operation of this enactment created extreme dissatisfaction amongst small traders and shopkeepers. In practice the dishonest debtor obtained a perfect impunity through the instrumentality of the law, and in many instances not only defrauded but laughed at his creditor. Fortunately the complaints of the small traders and shopkeepers found their way to the ears of their representatives.

The result was the passing of the Small Debts Act, 1845, (8 & 9 Vict. c. 127,) under which judgment creditors under 20*l* may summon their debtors before a commissioner of bankrupts or judge of a Court of Requests, and if the debtor shall appear to have been guilty of fraud, or other descriptions of misconduct enumerated in the act, he may be committed to prison for any time not exceeding forty

^b See *Culpepper v. Joy*, 4 Q. B. 172.

days, such imprisonment not to extinguish the debt.

It would now appear the trading community do not consider, that the act of 1845 affords them any security equivalent to that which they lost when arrest on mesne process was abolished; and indeed, it must be admitted to be wholly inefficacious as a protection against vexatious defences, as its operation does not commence until after a judgment has been actually obtained. Messrs. Warburton and Leader are not practical lawyers, and may well be excused if they are ignorant, that the Small Debts Act of 1846, (9 & 10 Vict. c. 95,) extends the principle of abolition of arrest on judgments under 20*l.* to that large division of actions which are founded on torts. Had this been fairly announced and explained by those who introduced the measure to the notice of parliament, the honourable members we have named, and others who have come to the conclusion that it is expedient to return to the law of arrest for debt, could scarcely have been guilty of so glaring an inconsistency as tacitly assenting to a measure for the extension of a principle to which they are avowedly hostile. The recent act, however, was driven through the houses of parliament at the close of the session, rather in the spirit of a dexterous and unscrupulous *nisi prius* advocate, than with the gravity and consideration of statesmen desirous of preparing the public mind for an extensive and important experiment. It is not wonderful, therefore, if the most intelligent portion of the community should remain unacquainted with many of its provisions until they suffer from them.

Reverting to the bill introduced at the close of the last session of parliament, "to restore arrest on mesne process," we are bound to state, that the clauses appear to have been cautiously and judiciously framed; but we take this early opportunity of suggesting to those who introduced the measure, that this is not a proper or beneficial mode of dealing with a subject of such magnitude. The whole law of debtor and creditor is in a most unsatisfactory state, and urgently calls for amendment. The position of debtor or creditor is forced on us as a condition of our social existence. Every head of a family—every one acting *sui juris*—is personally interested in the speedy and satisfactory adjustment of the question. but all experience has shown that piecemeal alterations in the law are worse than useless.

After the experience of the last ten years, it could not be difficult to state the principles upon which the law of debtor and creditor ought to be established. If the government within whose department the matter directly falls, are themselves too idle or too busy to undertake the task, they have abundant means at their disposal for obtaining the best practical assistance, and we venture to think that the subject will not present any difficulties which may not be overcome by ordinary foresight and industry, guided by practical experience. It is now demonstrated that, without the cordial and zealous co-operation of persons practically acquainted with the subject, no change in the law can be either efficacious or satisfactory.

PROSPECTS OF LAW REFORM.

WE have noticed somewhat fully in our first article the proposed restoration of the power of arrest on mesne process, and shall here briefly enumerate the other principal subjects of contemplated change, reserving the further consideration of them for another opportunity.

BANKRUPTCY AND INSOLVENCY.

It is confidently reported that the Lord Chancellor designs to introduce a *comprehensive* measure relating to the Law of Debtor and Creditor. It will be recollected that his Lordship has from session to session for several years introduced a bill on that subject. What favour the proposed revival of arrest on mesne process will find in his Lordship's sight we know not. Then there was the bill of Mr. Masterman and Mr. Hawes, which originated at a public meeting of bankers and merchants, convened in consequence of the mischievous state of the law as altered by recent statutes, and at which meeting a committee was appointed to procure an amendment of the evils complained of. Notwithstanding all this agitation,—not by dissatisfied lawyers, but by aggrieved and suffering creditors,—the measure was lost, and preference given to the project of Local Courts.* There were also bills introduced by Lord Brougham, but not passed, relating to judgment creditors and insolvent debtors.

From all these legislative sources we

* The measures in progress for carrying the Small Debts Act into effect are stated at p. 14, *post*.

may reasonably anticipate that the same or some similar, or new, plans of alteration will be brought forward in the ensuing session.

CONVEYANCING REFORM.

The next subject on which we are threatened with vast and comprehensive change, if not *revolution*, is that of the Law of Real Property and the Practice of Conveyancing. According to the latest information of the attempts which will be made in the ensuing session, it seems that Principle and Practice are alike doomed to destruction. Real property is to be assimilated to personal, and transferred from hand to hand as readily and inexpensively as bank stock! We have not heard that *possession* (nine points of the law) will be deemed a sufficient title, or that the doctrine of "reputed ownership" will be extended from sales of goods to acres of land.

It seems, however, to have been discovered, that a short form of conveyance is not a sufficient remedy for the alleged grievance, and that the *expense of investigating titles* must be curtailed. Towards this end, a map of everybody's property is to be made, and all *future* sales, mortgages, leases, settlements, or other dealings in land, are to be entered in a general registry. At present we hear only of the general scope of the plan. We shall some day, we suppose, have an opportunity of judging of the mode in which it is to be carried out, and shall have frequent and ample opportunities of discussing the scheme, which forms too large a topic for this brief review.

The *map*, which must be the great first step, we anticipate, will be found next to impossible, for reasons which we shall in due time state.

EXPENSE OF ADMINISTERING JUSTICE.

There is no doubt, we trust, that an inquiry will be instituted into the enormous proportion of the expense of administering justice which is thrown upon the shoulders of the unfortunate suitors, instead of the consolidated fund. Mr. Romilly gave notice of a motion to call the attention of the House of Commons to this subject, and Mr. Watson will, doubtless, be found at his post. We think that the further mooting of the question of the Chancery compensations is useless. The next will be the 5th session since the compensations were granted by parliament. The matter has been twice formally discussed and negatived, and we think that every effort

should now be directed to a reduction of the fees paid by suitors in all the courts of law and equity,—forming as they do a tax on justice, and frequently operating as an absolute denial of it. The whole object will not be achieved at first, but ultimately the suitor should pay only his counsel, attorney, and witnesses. The payments to them will be a sufficient check on improper litigation. The rest should be borne by the state.

THE POOR LAWS.

It is anticipated that further alterations will be proposed on this comprehensive head of legislation, the details of which are of great importance to the profession, as shown by the recent Poor Removal Act.

Under that act, although, on the one hand, a large mass of litigation has been stopped; on the other, numerous questions have been already raised on the construction of the act, and more may be anticipated.

HIGHWAY AND TURNPIKE ACTS.

We have not yet heard whether the plan announced by the late premier will be adopted by the present government. It was intended to consolidate the trusts which are dispersed so numerous over all parts of the country, and to place them under the superintendence, if not the management of a government board. This would affect the interests of several hundred solicitors.

In order to complete the catalogue of the almost endless changes in the law and the administration of justice, we may add the following projects, of which notices have been given with more or less of determination to push them forward:—

Amendment of the Game Laws.

Amendment of the Criminal Law in regard to Juvenile Offenders; the Punishment of Death; and Trials at the Quarter Sessions.

Compulsory Enfranchisement of Copyholds.

Several further measures for the Drainage of Settled Estates.

Further facilitating the Inclosure of Lands and providing that the Allotments shall be freehold.

Amendment of the Constitution of Committees on Private Bills, excluding all Members in any way interested therein.

For the Registration of Medical Practitioners.

For the Amendment of the Laws relating to Church Discipline.

JOINT OR SEVERAL LIABILITY ON BANKER'S PROMISSORY NOTE.

A QUESTION arising in bankruptcy,^a as to the right of a holder of certain bankers' notes to prove, against the joint estate of all the partners, or against the separate estate of one partner who had actually signed the note, has led to the determination of a point of some nicety and importance at law, and occasioned a case^b to be overruled which was considered as law for above twenty years, and cited as an authority in several legal treatises.^c

The note in question was in this form:—"I promise to pay the bearer, on demand," 5*l.*, for J. Clarke, R. Mitchell, J. Phillips, and T. Smith.—Signed, R. Mitchell." The firm of Clark & Co. having become bankrupts, the question was, whether R. Buckley, the holder of the note, was entitled to prove against the separate estate of R. Mitchell. Upon appeal from the Court of Review to the Lord Chancellor, the petitioner's counsel chiefly relied upon the case of *Hall v. Smith*, which was decided by Justices Bayley and Holroyd. In that case a promissory note beginning, "I promise to pay," was signed by one partner of a banking firm on behalf of himself and his co-partners, and it was held, upon a plea in abatement of the nonjoinder of his co-partners, that the party signing was severally liable to be sued upon the note. The decision in that case appears to have proceeded on the ground, that the words "I promise to pay" imported that the party signing promised for himself and others, but that he alone promised, and the court guarded against being understood to decide that one partner by signing could make a several note for each partner. On the other hand it was submitted, that the reasoning on which the case of *Hall v. Smith* was decided was unsatisfactory; and that if the principle of that decision prevailed, the clerks who signed the notes issued by the Bank of England must be personally liable.

The Lord Chancellor (*Lyndhurst*) said, that if the case had come before him independently of the case of *Hall v. Smith*, he should certainly have thought the note was

a joint note only, but he did not feel that he ought to overrule a case which had been so long unquestioned. Under these circumstances, the Lord Chancellor directed a case to be stated for the opinion of the Barons of the Exchequer, in which the question submitted to them was in substance, whether, if an action at law had previously to the fiat been brought by R. Buckley (the holder) against R. Mitchell separately upon the above-mentioned note, Mitchell would have had a valid defence founded upon the form of the note? Barons *Parke*, *Alderson*, and *Platt*, afterwards certified to the Lord Chancellor that, in their opinion, if an action at law had, previously to the fiat, been brought by R. Buckley against R. Mitchell, upon the note, Mitchell would have had a valid defence upon the form of the note; and the Lord Chancellor ultimately acted upon this certificate and dismissed the appeal.

The Lord Chancellor and the Court of Exchequer, might therefore be said to have concurred in overruling *Hall v. Smith*, and determining, that an action on a banker's note in the ordinary form must be brought against the partners jointly, and not against the partner who has signed the note separately.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

COMMUTATION OF TITHES.

9 & 10 VICT. C. 73.

An Act further to amend the Acts for the Commutation of Tithes in England and Wales. [26th August, 1846.]

1. 6 & 7 W. 4, c. 71.—1 & 2 Vict. c. 64.—*Power to landowners to redeem a rent-charge not apportioned where the amount does not exceed 1*l.**—Whereas an act was passed in the session of parliament held in the 6 & 7 W. 4, intituled "An Act for the Commutation of Tithes in England and Wales," and the said act has been amended, and the provisions thereof have been extended, by acts passed in the sessions of parliament held in the first year, the second and third years, the third year, and the fifth and sixth years of the reign of her present Majesty: And whereas an act was passed in the session of parliament held in the 1 & 2 Vict., intituled "An Act to facilitate the Merger of Tithes in Land:" And whereas it is expedient that the said acts should be amended as herein-after mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled,

^a *Ex parte Buckley in re Clarke*, 15 Law Jour. 3, Cases in Bankruptcy.

^b *Hall v. Smith*, 1 Barn. & Cres. 407.

^c See Bayley on Bills; Byles on Bills; Sel. Nisi P.; and Coll. on Partnership.

and by the authority of the same. That where, under any agreement or award which has been or hereafter shall be confirmed by the commissioners, the amount of the rent-charge agreed or awarded to be paid instead of the tithes of any parish shall not exceed the sum of 15*l.*, and shall not have been apportioned, or the apportionment of such rent-charge shall not have been confirmed by the commissioners, it shall be lawful for the owners of the land chargeable therewith, or any of them, with the consent of the person or persons for the time being entitled to the receipt thereof, or, in the case of an infant, feme covert, or lunatic, with the consent of the guardian, husband, or committee of the estate of the person so under disability, to redeem such rent-charge on payment, in manner hereinafter mentioned, (within such time as the commissioners shall in each case limit in this behalf,) of a sum of money not less than twenty-four times the amount of such rent-charge.

2. *Upon payment of the consideration money, commissioners to certify that the parish is discharged of Tithes.*—And be it enacted, That in every case in which any such rent-charge, not exceeding 15*l.* as aforesaid, has been or shall be awarded to be paid, the commissioners shall give notice, in such manner as they shall think fit, of the time within which it shall be lawful for the owners of the land charged therewith, or any of them, to redeem such rent-charge; and when it shall appear to the commissioners that the consideration money for the redemption of such rent-charge as aforesaid shall have been paid, according to the provisions of this act, within the time limited by them in this behalf, or within any enlarged time which the commissioners may by any order under their hands and seal allow for that purpose, no apportionment of the rent-charge shall be made, but the commissioners shall, by a certificate under their hands and seal, certify that such rent-charge has been redeemed, and that the parish is discharged of such rent-charge, and of the tithes in lieu of which such rent-charge was agreed or awarded to be paid, as from such time as the commissioners shall think reasonable and declare, and such parish shall be thenceforth discharged according to the terms of such certificate.

3. *Power to redeem rent-charge erroneously apportioned on lands not chargeable therewith.*—And be it enacted, That in every case in which, by any instrument of apportionment confirmed under the provisions of the said acts, any rent-charge or portion of rent-charge has been or shall have been (by reason of error as to boundary or otherwise) charged on lands not within the parish in respect of the tithes of which the aggregate rent-charge the apportionment of which shall have been so confirmed was agreed or awarded to be paid, such rent-charge or portion of rent-charge so charged on lands not within the parish shall be redeemable on payment by the owners of the lands charged with the residue of such aggregate rent-charge, or any of them, of a sum of money equal to

twenty-four times the amount of the rent-charge or portion of rent-charge hereby made redeemable, and it shall be lawful for the commissioners before they shall proceed to direct a new apportionment to give notice that the rent-charge or portion of rent-charge so erroneously apportioned on lands not within the parish may be redeemed, under the provisions of this act, within a time in such notice to be limited in this behalf.

4. *After redemption of the rent-charge erroneously apportioned, the apportionment of the remainder to be valid.*—And be it enacted, That when it shall appear to the commissioners that the consideration money for the redemption of the rent-charge or portion of rent-charge so charged by such instrument of apportionment on lands not within the parish shall have been paid, according to the provisions of this act, within the time which shall have been limited by the commissioners in this behalf, or within any enlarged time which the commissioners may by order under their hands and seal allow for that purpose, and that the arrears thereof (if any) have been paid, the commissioners shall under their hands and seal certify that such rent-charge or portion of rent-charge has been redeemed, and thenceforth, except as respects the lands so erroneously charged, and the rent-charge or portion of rent-charge apportioned thereon, the apportionment and charges made by such instrument of apportionment shall be valid and effectual in such and the same manner as if the aggregate rent-charge had originally consisted only of the sum of the portions charged on the lands within the parish, and had been apportioned on such lands, and no others, in the portions in the instrument of apportionment expressed.

5. *Separate rent-charges, not exceeding twenty shillings in amount, may be redeemed after apportionment.—Extraordinary charge not to be affected.*—And be it enacted, That in every case in which, under any confirmed instrument of apportionment or any altered apportionment under the powers of the said acts, the whole amount of the rent-charge or separate portion of rent-charge with which the lands of any owner shall be charged in respect either of all tithes or of any kind of tithes payable to separate tithe-owners shall be a sum not exceeding twenty shillings, it shall be lawful for such owner, at his option, and with the consent of the person or persons for the time being entitled to the receipt thereof, or, in the case of an infant, feme covert, or lunatic, with the consent of the guardian, husband, or committee of the estate of the person so under disability, at any time to redeem such rent-charge or separate portion of rent-charge on payment, according to the provisions of this act, of such a sum of money as shall be not less than twenty-four times the amount of the rent-charge or portion of rent-charge; and after payment of such consideration money according to the provisions of this act the commissioners shall certify that such rent-charge or portion of rent-charge has been redeemed, and

the same, from and after the payment of the half-yearly portion of such rent-charge or portion of rent-charge which shall next accrue due subsequently to the time of the payment of such consideration money, shall cease and be extinguished: Provided always, that no such redemption as last aforesaid shall extinguish or affect any extraordinary rent-charge which would become payable in respect of such land upon any change of the cultivation thereof.

6. *Commissioners to certify the amount of consideration money for redemption.*—And be it enacted, That in every case in which a rent-charge is redeemable under the provisions of this act, the commissioners shall, upon the request of the owners of land chargeable with such rent-charge or any of them, certify under the hands and seal of the commissioners the sum of money in consideration of which such rent-charge may be redeemed; and when it shall appear to the commissioners that payment or tender of such consideration money has been duly made, it shall be lawful for the commissioners to certify that such rent-charge has been redeemed under the provisions of this act, and such certificate shall be final and conclusive; Provided that if any consideration money shall be paid for the redemption of a rent-charge to a person not entitled under the provisions of this act to receive the same, the land which was charged with such rent-charge before the redemption thereof shall be charged in equity with the payment of such consideration money to the person rightfully entitled thereto as if the same were purchase money for such land remaining unpaid; but the same remedies may be had against the person who shall have wrongfully received such money as purchasers are entitled to by the rules of law and equity.

7. *Consideration money for redemption, how payable.*—And be it enacted, That where the person entitled to a rent-charge redeemable under the provisions of this act shall be absolutely entitled thereto in fee simple in possession, or shall be enabled to dispose of the fee simple in possession independently of the provisions of this act, and shall not be a spiritual person entitled in respect of his benefice or cure, or a corporation prevented from aliening such rent-charge otherwise than under the provisions of this act, a payment or tender to the person so entitled, or to the proper officer of the corporation so entitled, of the sum of money certified by the commissioners as aforesaid, shall be deemed a due payment of the consideration money; and in every other case the payment of the sum of money so certified according to the provisions herein-after contained shall be deemed a due payment of the consideration money.

8. *Consideration for redemption of rent-charges payable to spiritual owners to be paid to governors of Queen Anne's Bounty, to be applied in augmentation of benefices.*—And be it enacted, that the consideration money for the redemption under this act of any rent-charge

agreed or awarded to be paid or payable under any apportionment to any spiritual person in respect of his benefice or cure shall be paid to the "Governors of Queen Anne's Bounty for the augmentation of the maintenance of the poor clergy," and such consideration money shall be applied and disposed of by the said governors as money in their hands appropriated for the augmentation of such benefice or cure should by law and under the rules of the said governors be applied and disposed of; and the receipt of the treasurer of the said governors shall be a sufficient discharge for such consideration money, and the person paying the same to such treasurer shall not be concerned to see to the application or disposal thereof.

9. *Consideration money in case of owners under disability, how payable.*—And be it enacted, That in all other cases in which the person for the time being entitled to any rent-charge or apportioned rent-charge subject to be redeemed under the provisions of this act shall be only entitled thereto for a limited estate or interest therein, or shall be under any disability, or shall be a corporation not authorized to make an absolute sale of such rent-charge otherwise than under the provisions of this act, the consideration money to be paid for the redemption thereof shall be applied in manner hereafter provided; (that is to say,) shall, at the option of the person for the time being entitled as aforesaid, be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery, to be placed to his account there *ex parte* the title commissioners, pursuant to the method prescribed by any act for the time being in force for regulating monies paid into the said court, and such monies shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,) in the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the rent-charge in respect of which such money shall have been paid, or the tithes for which the same shall have been substituted, or affecting other hereditaments settled therewith, to the same or the like uses, trusts, or purposes; or in the purchase of other lands, to be conveyed, limited, and settled upon the like uses, trusts, purposes, and in the same manner, as the rent-charge for redemption of which such money shall have been paid stood settled; or in payment to any party becoming absolutely entitled to such money; and such money may be so applied as aforesaid upon an order of the Court of Chancery made on the petition of the party who would have been entitled to the receipt of the rent-charge in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in government or real securities, and the dividends thereof paid to the party who would for the time being have been en-

titled to the rent-charge in case the same had not been redeemed, or otherwise such consideration money may be paid, at the like option of the person for the time being so entitled, to the trustees acting under the will, conveyance, or settlement under which such person having such limited interest shall be entitled to or interested in such rent-charge, or if there are no such trustees, then into the hands of trustees to be nominated under the hands and seal of the said commissioners; and the money when so paid to such trustees, shall be applied by the said trustees, with the consent of the said commissioners, in the manner herein-before directed concerning any money to be paid for redemption into the Bank of England in the name and with the privity of the said Accountant-General; and upon every vacancy in the office of such trustee some other fit person shall be appointed by the said commissioners in like manner.

10. *As to consideration money under 20l.*—Provided also, and be it enacted, That when any consideration money so to be paid as last herein before mentioned shall not exceed the sum of 20l. for the redemption of all the rent-charge which shall be redeemable under this act, and shall not be payable to the governors of Queen Anne's Bounty as aforesaid, the same shall be paid, if the said commissioners shall so direct, to the person for the time being entitled to the rent-charge, for his own use and benefit, or in case of coverture, infancy, idiocy, lunacy, or other incapacity of the person for the time being entitled, then such money shall be paid, for the use of the person so entitled, to the husband, guardian, committee, or trustee of such person; and in case any dispute shall arise as to the proper application, appropriation, or investment of any money according to the intention of this act, it shall be lawful for the said commissioners to decide such question, and their decision shall be final and conclusive thereon.

11. *Power to persons entitled for limited interests to charge expenses of redemption.*—And be it enacted, That every owner of an estate in land less than an immediate estate in fee simple or fee tail, or which may be settled upon any uses or trusts, may, with the consent of the commissioners, or in such manner as they shall direct, charge so much of the consideration money and other monies payable in respect of the redemption of a rent-charge, or any part thereof, with interest after the yearly rate of 4l. by the hundred upon the lands of such owner which would have been subject to such rent-charge, or to an apportioned part thereof, but so, nevertheless, that the charge upon such land shall be lessened in every year after the redemption of such rent-charge by one twentieth part at least of the whole original charge thereon.

12. *Commissioners' certificates of redemption to show amount of consideration for the same.*—And be it enacted, That every certificate of the commissioners of the redemption of a rent-charge under the provisions of this act shall

be under the hands and seal of the commissioners, and shall show the amount of the consideration money for the redemption thereof, and to whom or in what manner the same shall have been paid; and copies of every such certificate shall be made, and sealed with the seal of the commissioners, and shall be deposited in the like custody and in like manner as by the said first-recited act is provided concerning every confirmed instrument of apportionment; and copies of and extracts from any copy of such certificate shall be furnished in like manner as copies of any copy of a confirmed instrument of apportionment; and every recital or statement in any such certificate or in any sealed copy thereof, shall be evidence of the matters therein recited.

13. *Alteration of apportionment may be made after inclosure, &c.*—Such alteration when confirmed, to be valid.—And be it enacted, That where lands now charged or hereafter to be charged with rent-charges or portions of rent-charges under confirmed instruments of apportionment have been or shall be (after the confirmation of such apportionment) inclosed or divided, allotted or exchanged, by agreement or award made under the powers of any general or local act of inclosure, (or otherwise,) in such manner that the apportionment shall appear to the commissioners to be inconvenient with reference to the altered distribution of the land among the several owners thereof, it shall be lawful for the commissioners, upon the application of the owners of such lands, or the majority in number and value of such owners, or upon the application of the person or persons entitled to such rent-charges or portions of rent-charges, or any of them, to make or confirm an altered instrument of apportionment adapted to the altered distribution of the lands, in order that the rent-charges or portions of rent-charges originally charged on the several portions of land which shall have been taken or allotted away from the former owners on such inclosure, division, allotment, or exchange, shall be charged on the lands which shall have been allotted or received in the way of substitution or compensation for the lands so taken or allotted away from the former owners thereof, or as near thereto, as circumstances will admit; and every such altered apportionment, when confirmed under the hands and seal of the commissioners, shall be valid as from the date of such confirmation, and shall be taken to be an amendment of the original apportionment.

14. *Expenses of alteration of apportionment shall be borne by owners of lands to which it shall relate.*—And be it enacted, That all the expenses of the altered apportionment last aforesaid shall be borne by the owners of the lands to which such altered apportionment shall relate, and shall be recovered in the same manner as expenses chargeable on the same owners in or about the making of an original apportionment of the sum of the rent-charges charged on the same lands respectively would have been recoverable; and all the pro-

visions of the said acts in relation to such of the expenses of or incident to making an apportionment of a rent-charge as are payable by the owners of the land included therein shall extend and be applicable to the expenses of such altered apportionment.

15. *Supplemental apportionment of a rent-charge as made payable to one owner in respect of tithes belonging to several owners or held in separate rights.*—And it enacted, that where by any agreement or award made under the provisions of the said acts a rent-charge has been or shall have been agreed or awarded to be paid to any person in lieu of any tithes, and after the apportionment of such rent charge shall have been made and confirmed under the provisions of the said acts, it shall appear that some tithes included in the aggregate tithes in lieu of which such rent-charge shall have been so agreed or awarded to be paid, or some portion or undivided share of some tithes so included, were or was at the time of such agreement or award the property of some person other than the person to whom the same rent-charge was so agreed or awarded to be paid, or that the whole of the tithes included in the aggregate in respect of which such rent-charge was agreed or awarded to be paid were not held by the person to whom such rent-charge was so agreed or awarded to be paid in the same right and for the same estate, or were not subject after the determination of the estate of such person to the same limitations or estates legal and equitable, it shall be lawful for the commissioners in any of the cases aforesaid, in pursuance of or in accordance with the decree or direction of a court of equity of competent jurisdiction, or on the request in writing of the parties who for the time being in case there had been no commutation would have been the owners of all the tithes included in such aggregate, to make or confirm a supplemental award or apportionment of such rent-charge in such manner that, without altering the aggregate amount or rent-charge to which any owner of land may be subject, separate rent-charges or separate portions of rent-charge may be made payable to the parties who would have been owners of the tithes in case they had not been extinguished in lieu of the several tithes or portions of tithe included in such aggregate which would belong to different persons, or be held in different rights, or be subject to different limitations or estates; and by such supplemental award and apportionment the commissioners, if they shall so think fit, may apportion or award to be paid to one of the respective owners, or to the owner in lieu of one of his respective rights, the whole of any rent-charges payable under the original instrument of apportionment out of specific lands, instead of dividing each rent-charge made payable in lieu of the aggregate of the tithes of each parcel of land between or among the owners of the separate tithes arising out of such parcel; and such supplemental award and apportionment, when confirmed by the commissioners under their hands and seal,

shall take effect from the half-yearly day of payment which shall happen next after the confirmation thereof.

16. *Commissioners empowered to declare that lands to which doubts have arisen, shall be considered a separate district for commutation, and the residue of the parish to remain subject to the original award.*—And be it enacted, That where by any confirmed agreement or award a rent-charge shall have been agreed or awarded to be paid instead of the tithes of any parish, or of any of such tithes, and before the apportionment of such rent-charge shall have been confirmed, it shall appear to the commissioners that by reason of any question or doubt which after the confirmation of such agreement or award shall be raised or shall exist in respect of any actual or supposed exemption from tithes, modus, composition real, or prescriptive or customary payment, applicable only to a part of the lands in such parish, or by reason of any other question or doubt whatsoever applicable only to a part of the lands in such parish, or by reason of any question or doubt touching the boundaries of such parish, it cannot be immediately ascertained whether the agreement or award might require any and what rectification in respect of the matters to which such question or doubt shall relate, it shall be lawful for the commissioners by a separate award by way of supplement to the agreement or award to declare that the lands to which such doubt or question shall be applicable shall be considered a separate district for the commutation of the tithes thereof, and that the residue of the parish, or the parish exclusively of the lands to which the question or doubt touching boundaries may be applicable, shall remain subject to the agreement or original award, with such variation as in the award by way of supplement shall be directed; and the commissioners, in case they shall find that in estimating or fixing the amount of the rent-charge so agreed or awarded to be paid any sum was included or added in respect of the lands which they shall have directed to be considered a separate district, shall declare what sum was so added, and shall direct the residue of the rent-charge, after deducting such sum, to be apportioned on the lands composing the residue of the parish, or on the parish exclusively of the lands which they shall have formed into a separate district; but if they shall find that by reason of exemption or supposed exemption or otherwise no sum was so included or added in respect of the lands which they shall have formed into a separate district, they shall direct the whole of such rent-charge to be apportioned on the lands comprising the residue of the parish, or on the parish exclusively of the lands which they shall have formed into a separate district; and all awards by way of supplement under this section shall be subject to the provisions of the said act of the session of parliament holden in the second and third years of her Majesty, concerning the separate awards by way of supplement to a parochial agreement or award.

17. Place of deposit of copy of confirmed apportionment may be altered by quarter sessions.

—And be it enacted, That where the place of deposit of the copy of a confirmed instrument of apportionment which by the said act of the session of parliament holden in the 6 & 7 W. 4, is directed to be deposited with the incumbent and church or chapel wardens for the time being, or such other fit person as the commissioners shall approve, shall be alleged to be inconvenient to the majority of the persons interested therein, or otherwise inconvenient or unsafe, it shall be lawful for any person interested in the lands or rent-charge to which such apportionment shall relate to apply to the court of general quarter sessions of the peace for the county, riding, division, or place in which such place of deposit shall be situate for an order for the deposit of such copy in some more convenient or secure custody or place, and fourteen days' notice in writing of every such application shall be given to the persons in whose custody such copy shall at the time of such application be deposited; and it shall be lawful for the court at the quarter session for which such notice shall be given to hear and determine such application in a summary way, or they may, if they think fit, adjourn it to the following session; and upon the hearing of such application the court may, if they think fit, order such copy to be removed from the custody of the persons with whom the same shall have been deposited, and to be deposited with such other persons or in such other custody as the court, having reference to the security and due preservation of such copy, and to the convenience of the parties interested therein, may think fit, and may make such order concerning the notice to be given of such removal and deposit, and concerning the costs of such application, or of any opposition thereto, as they may think reasonable.

18. Tithes or rent-charge in lieu thereof may be merged after agreement or award, but before apportionment.—And be it enacted, That where by any agreement or award already made or hereafter to be made a rent-charge shall have been agreed or awarded to be paid instead of the tithes of any parish, or instead of any of such tithes, and shall not have been apportioned, it shall be lawful for the person who under the provisions of the said recited acts would have been enabled in case such agreement or award had not been made to merge the tithes in lieu of which such rent-charge shall have been agreed or awarded to be paid, or such of the same tithes as were payable out of part of the said lands, by any deed or declaration, to be made in such form as the commissioners shall approve, and to be confirmed under their hands and seal, to declare that the tithes which he would have been so entitled to merge shall, so far as respects all the lands, or, if he shall think fit, so far as respects only any specified part of the lands out of which the same were payable, and the rent-charge or portion of rent-charge which shall have been awarded or ought to be apportioned in lieu thereof on such

lands, or specified parts of such lands, as the case may be, shall be merged, and such merger shall take effect accordingly; and in case such merger shall extend to all the lands which would have been chargeable with such rent-charge, no apportionment of such rent-charge shall be made under the provisions of the said recited acts; but in case such merger shall extend to part only of the lands which would have been chargeable with such rent-charge, then such portion of the rent-charge shall be apportioned among the other lands which would have been chargeable with such rent-charge as such other lands would have been subject to in case such merger had not taken place; and the owner of the land to which such merger shall extend shall pay such portion of the expenses of or incident to the apportionment as the commissioners or any assistant commissioner may under the special circumstances order to be paid by such owner, instead of the rateable proportions to which he would have been liable in case the whole of such rent-charge had been apportioned.

19. Powers relating to the merger, &c., of any tithes may be executed by a person entitled in equity.—And be it enacted, That all powers relating to the merger and extinguishment of any tithes, or rent-charge instead thereof, may be executed by a person entitled in equity to such tithes or rent-charge in all respects and with the same consequence as he could have done if he had been legally entitled thereunto; and every instrument already executed and purporting to be made in pursuance of the powers of the said acts or any of them by any person so entitled in equity shall in every respect be as effectual and have the same consequence as if he had been legally entitled to the said tithes or rent-charge at the time of the execution of such instrument, subject nevertheless in every case to any charge, incumbrance, or liability which lawfully or equitably existed on such tithes or rent-charge to the extent of the value of such tithes or rent-charge; and any such charge, incumbrance, or liability shall have such priority, and the lands and the owners thereof for the time being shall be liable in the same manner in respect of such rent-charge, incumbrance, or liability, or of any penalty or damages for non-payment or non-performance thereof respectively, as by the said act of the session of parliament held in the second and third years of the reign of her present Majesty is provided in the case of such merger or extinguishment as therein mentioned; and every instrument purporting to merge any tithes or rent-charge, and made with the consent of the said commissioners before the passing of this act, shall be hereby absolutely confirmed and made valid both at law and in equity in all respects, subject nevertheless to any charge, incumbrance, or liability in all respects as is lastly herein-before provided.

20. 1 & 2 Vict. c. 64, to be construed as part of the Tithe Commutation Acts.—And be it enacted, That the said act of the session of parliament holden in the first and second years

of the reign of her Majesty shall be construed with and as part of the first-recited act as amended by the several acts passed for the amendment thereof and by this act.

21. *Decisions concerning boundary not appealed against to be valid notwithstanding informality.*—And be it enacted, That in every case in which the judgment or determination of the commissioners or of any assistant commissioner already given respecting the boundary of any parish, township, district, or lands shall not have been removed into the Court of Queen's Bench by certiorari within the time limited in that behalf, such judgment or determination shall be valid and conclusive notwithstanding any want of form in such judgment or determination, or in the award in which the same may be set forth, and although it may not appear on the face of such award, judgment, or determination, or otherwise, that the commissioners or assistant commissioner had jurisdiction in relation to such boundary.

22. *Glebe lands may be exchanged although no commutation be pending.*—And be it enacted, That the provisions of the said act of the session of parliament holden in the fifth and sixth years of the reign of her Majesty for the exchange of glebe lands for other lands shall authorize and be deemed to have authorized the exchange of glebe lands for other lands, although at the time of such exchange, or of the applications in relation thereto, no proceedings for or concerning the commutation of tithes in the parish in which such glebe lands may be situate shall have been pending, and whether the commutation of tithes in such parish shall or shall not have been completed.

23. *Act to be construed as part of 6 & 7 W. 4, c. 71, &c.*—And be it enacted, That this act shall be construed with and as part of the first-recited act as amended by the several acts passed for the amendment thereof and by this act.

24. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

STATE OF THE LAW OF TITHES.

An able pamphlet on "the present state of the Law of Tithes under Lord Tenterden's Act and the Act for the Limitation of Actions and Suits relating to Real Property with reference to Tithe Commutations," by Mr. W. R. Ripley, Solicitor, has just made its appearance.*

The importance of the subject may be judged of from the fact that the number of cases dependent upon the construction of Lord Tenterden's Act is declared by the Report of the Tithe Commissioners in

1844 to amount to some hundreds and, indeed, to be indefinite. In their Report for 1845, they advert to the want of decision upon the disputed points arising out of that act; and in their Report for 1846, they express their deep regret that the law under that act remains as uncertain as ever. In that state it had been suffered to remain since 1840. Mr. Ripley submits, that the reasons of the late Chief Justice Tindal, and of Mr. Justice Cresswell, in support of their certificate in *Salkeld v. Johnson*, have done much to clear the way for a decision. *And he observes, that the amount of reveñue of the church, and more particularly of the parochial clergy, dependent upon the question in *Salkeld v. Johnson*, is very considerable, and should the Vice-Chancellor Wigram's decree be ultimately overruled, the means of usefulness of the establishment would be proportionally impaired.

Mr. Ripley observes, that—

"By the 10th section of the Tithe Commutation Act, (6 & 7 W. 4, c. 71), the commissioners or assistant commissioner are prohibited from requiring the production of any deeds, papers, or writings relating to the title of any lands or tithes; and yet by the 45th section of the act they are nevertheless empowered to hear and determine any suit pending or touching the right to any tithes, or any question as to the existence of any modus, or composition real, or prescriptive or customary payment, or any claim of exemption from or non-liability under any circumstances to the payment of any tithes in respect of any lands or any kind of produce, and subject to appeal by an issue at law, the decision is to be final and conclusive on all parties. After the decision of the commissioners or assistant commissioner in case of an appeal, the 46th section of the act provides, that in the issue the parties must produce to each other and their respective attorneys or counsel as any judge may order before trial, and also to the court and jury all deeds, books, papers and writings, terriers, maps, plans and surveys relating to the matters in issue, in their respective custody or power, so that the appeal from the decision of the commissioners or assistant commissioner is to be heard and determined upon evidence which was not, and could not be before them or him. Surely so extraordinary a mode of providing for the administration of justice (though the administration of justice by commissioners has since 1830 become so prevalent) is not to be found in any other act."

Two of the principal questions that have arisen in tithe commutations are the following:—

* Published by Hatchard & Son, and Stevens & Norton.

"1st. Whether, where there has been non-payment of tithes for sixty years, the tithe

owner being a spiritual corporation sole, the land is exempt from the payment of tithe by such non-payment only without showing any other ground of exemption? That was the question before the Court of Queen's Bench in *Fellowes v. Clay*, clerk.

"2ndly. Whether, where the non-payment has not been of all tithes generally, but only of the tithes of particular crops or produce, such as turnips, potatoes, green crops, and tithe of agistment, the land is in that case exempt from the payment of tithes of those particular crops or produce by such non-payment, without showing any other ground of exemption?"

"The latter is the question now pending in *Salkeld v. Johnson*, upon which opposite certificates have been returned to the Lord Chancellor, from the judges of the Court of Common Pleas."

Mr. Ripley thus states the question:—

"Whether the legislature intended by the words used in the first section of it, 'Prescription and claim of, or to any exemption from or discharge of tithes by composition, real, or otherwise,' any other exemption or discharge than was previously known to the law. The preamble of the act certainly does not by any means lead to the conclusion that a new exemption or discharge was intended to be created by the act, for how can you shorten time which previously availed nothing, unless applied to lands privileged, and apply the shortened time to lands unprivileged? It is not desired, according to the expression of Williams, J., in his judgment in *Fellowes v. Clay*, 'to import from the preamble limitations and restrictions,' but only to use it as showing that throughout the act no other than an existing legal exemption or discharge is referred to, which is to be sustained in the words of the act upon evidence showing enjoyment of the land without payment, &c.; and then the land thus spoken of must be land to which an existing legal exemption or discharge was applicable; and it seems to be fairly demonstrated in the judgment of the Vice-Chancellor Wigram in *Salkeld v. Johnson*, by the judgments of Patteson, J., and Coleridge, J., in *Fellowes v. Clay*, and by the reasons given by the late Chief Justice Tindal and Mr. Justice Cresswell, in support of their certificate in *Salkeld v. Johnson*, not yet reported, in the Court of Common Pleas, that the act may well be read and fully expounded upon the supposition that no new exemption or discharge was intended to be created by it, and this appears to go far to determine the question, for where so great an alteration in the law is contended to have been made, it should be shown to have been effected by clear and unequivocal enactment, or the law must remain as it was.

"Nothing could have been more easy than to have effected that alteration by clear and unambiguous enactment if it had been intended to be made. It is observed also by Cole-

ridge, J., in his judgment in *Fellowes v. Clay*, that no such decree as the 2nd section confirms, is to be found within sixty years, so that, if that time alone created a discharge, such enactment was unnecessary.

"On the other hand, however, there are the judgments in the Queen's Bench of Lord Denman, C. J., and Williams, J., in *Fellowes v. Clay*, with the certificate and reasons given in support of that certificate in *Salkeld v. Johnson*, by Colman, J., and Erle, J., in the Common Pleas, that a new exemption and discharge has been created by Lord Tenterden's act."

We would next call the attention of our readers to the effect of Lord Campbell's Act. Mr. Ripley observes that—

"This act was certainly intended to apply in all cases supposed to be affected by Lord Tenterden's Act, and if so, according to Lord Campbell's and the legislative exposition, the provisions contained in Lord Tenterden's Act, previously recited in the words of it, and confining it to cases where 'the enjoyment of the land has been without payment or render of tithes, money, or other matter in lieu thereof,' (and which words might render it doubtful whether the act applied or not where the enjoyment had been without payment or render of particular tithes only, money or other matter in lieu thereof,) Lord Tenterden's Act is applicable only 'to lands in respect whereof no tithes nor any composition in lieu thereof shall have been actually rendered or paid,' the language used in the 1st section of Lord Campbell's Act.

"Without having before them the benefit of this exposition, the late Lord Chief Justice Tindal and Mr. Justice Cresswell, at the conclusion of their reasons in support of their certificate, sent to the Lord Chancellor in *Salkeld v. Johnson*, observe, 'That in that case the claim is not of an exemption from the payment of tithes generally, but only from the payment of certain particular things, and that it may be well doubted whether the statute has any application to such a state of things, for the evidence thereby required is of the enjoyment of the land, without payment or render of tithes, money, or other work, in lieu thereof; whereas the land in question has not been enjoyed without payment or render of tithes, although the tithes in question have not been rendered, nor has any money or other matter been paid or rendered in lieu thereof.'"

In many parts of England, and particularly in the north, there have been very extensive inclosures within the last sixty years. Mr. Ripley observes, that—

"Particular inquiries should be made as to inclosures, for though an exemption or discharge will extend to a common appurtenant to the lands discharged, and consequently to an inclosure made in respect of the common,

Lambert v. Cumming, 1 Eagle and Younge's Tithe Cases, 790, and a general modus in lieu of all tithes may be laid as extending to a common appurtenant and to the lands inclosed in respect thereof, see *Stockwell v. Terry*, 2 Eagle and Y. 118, decided by Lord Hardwicke,* yet it was decided by Lord Mansfield, and the Court of Queen's Bench, in *Moncaster v. Watson*, 3 Burr. 1375; s. c., 1 Blac. 402, and see 2 E. & Y. 197, that where the modus is not a general modus, but partial, as for corn or for hay only, as neither corn nor hay grew on the common before the inclosure, the inclosure is not covered by the modus, in which there is no equivalent at all for the tithes of agistment of wool, milk lambs, or any other tithes of such a kind as could arise upon a common, which reasoning of Lord Mansfield is adopted by Eyre, C. B., in *Scot v. Fenwick*, 3 E. & Y. Tithe Cases, 1318, and in the Court of Queen's Bench, the decision in *Moncaster v. Watson*, has recently been affirmed in the case of *Briscoe, Bart., v. Fell, Clerk*, which was before that court on the 7th of June, 1842, being a special case agreed upon under the 46th section of the Tithe Commutation Act (the 6 & 7 W. 4, c. 71). In *Briscoe v. Fell*, W. H. Watson was for the plaintiff and Cowling for the defendant, who was rector of the parish of Aikton in the county of Cumberland. The case is not reported, and is here stated from Mr. Cowling's brief. The common appurtenant there was inclosed and divided by agreement among the commoners in 1827, and allotments containing fifty acres were awarded to the plaintiff in respect of his ancient farm or estate. The modus of 1*l.* 2*s.* as there stated in a terrier as to the ancient farm was considered by the court to be a modus for corn and hay; the case stated in the modus to have been made and rendered from time immemorial, and that no tithes in kind of corn, grain, or hay had ever been rendered or claimed in respect of the said ancient farm, but that tithes in kind had been tendered immemorially of wool, lamb, calves, pigs, milk, fowls, and eggs, from and in respect of this farm, and both previously and subsequently to the inclosure such tithes in kind of wool, lambs, &c., had been rendered immemorially in respect of the lands so inclosed when any such tithes had been produced. Upon the case so stated, judgment was given for the defendant.

"Coleridge, J., observed nothing was said about uninclosed lands by name. That *Moncaster v. Watson* was similar to the present case, and it was determined in fact there that it did not extend to the common. Patteson, J., observed that the distinction was pointed out by Parke, J., in *Askew v. Wilkinson* 3 B. & Ad. There the modus was for all things."

In addition to the full discussion of the present state of the Law of Tithes, on the

points above stated, Mr. Ripley includes in his appendix,—

"Lord Tenterden's Act, 2 & 3 W. 4, c. 100; the third report of the real property commissioners; the questions relating to church property, submitted by the commissioners to the bench of bishops, with their answers; and then follow the judgment of Vice-Chancellor Wigram in *Salkeld v. Johnson*; the judgment in the Queen's Bench in *Fellows v. Clay*; and the certificates and reasons of the judges of the Court of Common Pleas in *Salkeld v. Johnson*."

NEW ORDER IN BANKRUPTCY.

BIRMINGHAM DISTRICT.

Friday, 11th September, 1846.

LORD CHANCELLOR.

Whereas by a statute made at the parliament holden in the 7th & 8th years of the reign of her present Majesty, Queen Victoria, intituled, "An Act to Amend the Law of Insolvency, Bankruptcy, and Execution," it was enacted, amongst other things, after reciting that it might be expedient that the Court of Bankruptcy should hold sittings in some matters in bankruptcy or petitions for protection from process, at some place or places at which such court should not heretofore have been used to sit; that it should be lawful for the Lord Chancellor, at any time or times whenever it should appear to him under the circumstances of the case to be expedient, by an order or orders, to give the necessary directions in that behalf.

And whereas it has been represented to me that it will be attended with benefit to the public, and it appears to me, under the circumstances of the case, to be expedient that matters of bankruptcy and petitions for protection from process, arising or to arise within the Northern Division of the county of Leicester, or within the town or borough of Leicester, or within the parts of Kesteven and Holland, in the county of Lincoln, or within the Southern Division of the county of Nottingham, or within the town and county of the town of Nottingham, or within the Southern Division of the county of Derby, as such divisions are settled and described by a statute made at the parliament holden in the 2nd & 3rd years of the reign of his late Majesty King William the Fourth, intituled, "An Act to settle and describe the Divisions of Counties and the Limits of Cities in England and Wales, in so far as respects the Election of Members to serve in Parliament" should be heard and determined at the Town of Nottingham. Now I do hereby order that the Court of Bankruptcy for the Birmingham District do hold sittings, except as the Lord Chancellor may otherwise direct, in the town of Nottingham for the opening or proceeding upon all commissions or fiat bankruptcy already issued or hereafter to be issued against any person or persons residing

* "And see also *Askew v. Wilkinson*, 3 B. & Ad. 152, and the Bishop of Carlisle v. Blair, 1 Yo. & J. 123."

within the divisions, towns, and places aforesaid, and for the receiving of and proceeding upon all petitions for protection from process already presented or hereafter to be presented by persons residing within the divisions, towns, and places aforesaid, and in all matters preparatory to, or arising under, or in the prosecution of, such commissions, fiats, or petitions: Provided always, and I do hereby further order that in cases of joint fiats or joint petitions for protection from process which shall be or shall have been issued or presented against or by any persons, some or one of, whom shall be or shall have been residents within the limits hereby assigned for transacting matters in bankruptcy at the town of Nottingham at the time of the issuing of such fiats or commissions, and I do further

order that one of the official assignees of the said District Court of Birmingham do have his place for transacting the business appertaining to his office at the town of Nottingham, at which he shall transact all his business in matters of bankruptcy or petitions for protection from process by virtue of this order to be transacted at the town of Nottingham.

COTTINGHAM, C.

THE SOLICITORS' DIARY.

THIS work does not come up to its promise. The lists are not peculiarly adapted for solicitors. Most of them are the ordinary lists in everybody's pocket book. The usual legal lists are very much abridged and very inaccurate, as shown by the following instances:—The new judge is placed before two of the older ones and in the wrong court. Two of the country commissioners in bankruptcy are omitted. The Masters in Chancery are given, not according to seniority, but alphabetically; and the name of the unqualified Master's clerk, who never was chief clerk, is promoted to that position, and the duly qualified one last appointed is not mentioned. Several of the lists are taken from the Legal Almanac, without acknowledgment; amongst others, the list of country law societies and perpetual commissioners. On comparing the latter list in the Legal Almanac with that of the Law List, several additional names will be found. These have been invariably copied, without correcting any slight misprint. Fifteen pages are devoted to country bankers, whilst several useful professional lists are altogether omitted or unduly curtailed. The index to the acts of last session, occupying nine pages, is a mere copy of the Queen's printer's index, and comprises the miscellaneous acts. The Diary does not allow sufficient space for the average amount of business.

PROCEEDINGS FOR CARRYING THE SMALL DEBTS ACT INTO OPERATION.

THE Lord Chancellor, it appears, has directed Mr. Bethune to make inquiries preparatory to putting this act into execution. The following is the Lord Chancellor's letter of instructions, and Mr. Bethune's circular to the Clerks of the peace.

Wimbledon, Sept. 16.

"Sir,—It is the intention of her Majesty's government to proceed forthwith to put in execution the act recently passed for the recovery of small debts.

"The first thing to be done is the division of the country into districts, and the appointment of her Majesty's advisers. It is my wish that you should undertake to conduct these inquiries, for which you are well qualified, by your knowledge of the details of the act, and of the several local acts which it will supersede.

"I annex the particulars of a set of districts with which I have been furnished; from which, combined with the verbal instructions which you have received from me, you will perceive the principles on which I wish the division to be proposed.

"You will endeavour to ascertain from those persons who appear to you most likely to be able to furnish correct and disinterested information, how far these districts are likely to prove convenient, and what alterations may be deemed desirable. You will be careful to remind those whom you consult, that this inquiry is merely preliminary, and that full opportunity will be given for the representations of all parties concerned, after the formal notice required by the act shall have been given in the *Gazette*, of her Majesty's intention to take the matter into consideration.

"I have not thought it necessary that you should be furnished with more formal authority than this letter for instituting these inquiries, not doubting that you will meet with ready co-operation from all persons capable of assisting you in obtaining for her Majesty's government the means of perfecting this measure, the proper adjustment of which imports so highly to the common advantage.

"I am, &c.,
"COTTENHAM.

"J. E. D. Bethune, Esq., &c."

"Gwydir House, Whitehall, October, 1846.

"Sir,—Inclosed I send you some copies of a map showing the boundary of a district, which it has been proposed to place under one judge for the purposes of the Small Debt Court Act.

"These districts have been formed by con-

sideration of the division of the country under the Act for Registering Births, Deaths, and Marriages. The district No. () consists of the superintendent-registrar's districts which are named in the accompanying list; and it is proposed that courts should be held in the towns named at the foot of the list. I have not thought it advisable at present to mark on the map any subdivisions of the district, because these cannot be well adjusted until the principle of the main division into districts is settled; and it is desirable to learn in the first instance how far that is likely to prove satisfactory. The towns have been selected so as to cover the whole country with courts as equally as possible, having some reference also to those towns in which courts are now held under local acts. It is not proposed that courts should be held at the same intervals in all these towns; once a week or oftener will be necessary in some, while in others once a fortnight or month, or even less frequently, will be found sufficient. I request that you will take the trouble of communicating these lists to those gentlemen of your county who, in your opinion, are most likely to have considered the subject, and to intimate to them that I shall be glad to profit by any suggestions they may wish to make. These may be addressed either to me, or to my secretary, Emilius Clayton, Esq., Gwydir House, Whitehall, and indorsed 'Small Debts Courts.' After revising the lists upon such information as I shall receive in consequence of this first communication, I intend to send the maps, corrected as may then be necessary, to each bench of magistrates in the county, and by these means I hope to be enabled to present an accurate report to the Lord Chancellor for his consideration.

"I take leave again to remind you that the inquiry with which I am charged in this matter is wholly preliminary, and that the subject will come to be discussed by her Majesty in council, after the statutory month's notice has been given in the *Gazette*, which will not be until after the Lord Chancellor has received my report.

"The information which I now seek is whether the towns selected are well chosen whether any others ought to be added or substituted for those in the list; also whether any part of the proposed district would be more advantageously annexed to an adjoining district, or any addition taken into it. For the purpose of facilitating the consideration of these questions, I have had the situation of some of the chief towns in the adjacent districts lying near the boundary marked in the margin of each map.

"I have the honour to be, Sir,

"Your obedient servant,

"J. E. D. BETHUNE."

"I have inclosed some additional copies of the Lord Chancellor's letter of instructions to me."

[The list of districts throughout the country is too long for insertion. We may mention,

however, that six are proposed for Middlesex, and two for Surrey. The latter two will comprise the whole of the metropolis south of the Thames and its immediate neighbourhood, including Greenwich and Woolwich. The other six consist respectively of Westminster, two divisions of the Tower Hamlets, and three other districts, formed by subdividing all the metropolitan portion of the district now within the jurisdiction of the County Court of Middlesex. The city of London is not within the scope of the act.]

INFERIOR COURTS NOT ABOLISHED.

To the Editor of the Legal Observer.

SIR,—I think your correspondents have not paid sufficient attention to the numerous inferior courts that are not to be abolished by the new measure; though the idea may be that their practice will be taken away; this, I think, unquestionable.

In the reigns of Elizabeth and the Stuarts, the inferior courts were a good deal resorted to. Their action, practice, pleadings, and appeal were, and still are at common law, but there was an awkward rule, that their judgments should be strictly examined, and in consequence there were many writs of error and false judgment, and owing to this strict rule many cases were wrecked; from this as one reason, but more because the superior courts administered better laws and better justice, many of the inferior courts got into disuse.

Still it may be said, that the old inferior courts, many with good and experienced judges, will administer better laws and better justice than the new small debt courts with this important advantage, that if wrong—that wrong can be remedied in the old inferior courts according to the rules of common law.

S. P.

By a parliamentary return recently issued, it appears that from the 10th of Nov. 1845, to the 10th of May last, 26,375 writs of summons were issued out of the Court of Queen's Bench; 12,873 from the Court of Common Pleas; and 30,763 from the Court of Exchequer. We believe that more than one-half of the number of these writs were for sums under 20*l*. See the return, 32 L. O. p. 581.

SHARP PRACTICE.

To the Editor of the Legal Observer.

AWARD OF VENIRE IN ISSUES.

SIR,—I am desirous of giving a word of caution to the respectable portion of our profession, on a point of practice. In making up and delivering an issue, it has always been my custom to leave the award of the venire in blank, and I have been informed by very many others, that they have pursued the same course. Judge then of my surprise to find last week, a summons served by one of the (I am happy to

say, comparatively few,) black sheep of the profession, to set aside the issue and notice of trial, on the ground of irregularity, with costs, "there being no date in the award of the venire!" The summons was attended, and it was argued before the learned judge, that in point of practice there was no irregularity, that the defendant was in no way prejudiced by the want of the date, and that the summons must be dismissed. His lordship dismissed the summons, but ordered me to pay 6s. 8d. to my opponent for costs of amending issue, being of opinion, that there should be a date in such award of the venire. To avoid these sharks, I would suggest the insertion of a date for the future, though I still believe it perfectly unnecessary.

VIGIL.

NOTES OF THE WEEK.

FIRST DAY OF TERM.—THE NEW JUDGES AND COUNSEL.

The Right Hon. Sir Thomas Wilde, the New Chief Justice, and now a Privy Councillor, took his seat on the first day of Term, amidst a crowded court. This promotion is a happy illustration of our free and excellent constitution. As the humblest peasant may become the first peer of the realm, so a member of the third branch of the profession may become a chief of the highest. Well has the present chief won his way. Rapidly as a young man obtaining by his own talent and exertion a large practice as an attorney; with still increasing power, learning, and untiring energy, advancing to the most eminent position at the bar, and now destined, we hope for many years, to dignify the judgment seat.

Mr. Justice Erle has been promoted (if it may be so termed) from the seat of the Junior Judge in the Common Pleas to the like position in the Queen's Bench; and Mr. Justice Vaughan Williams, the new judge, has taken his seat in the Common Pleas. All the puisne judges, however, no matter of which of the three courts, rank according to the date of their appointments to the bench.

The new Queen's Serjeants and Counsel, whose promotion we announced in the vacation, were called and took their seats within the bar of the several courts at Westminster, viz., Mr. Serjeant Palfourd and Mr. Serjeant Manning, as Queen's Serjeants; Mr. Bacon, Mr. Walpole, and Mr. Rolfe, of the Chancery bar; and Mr. Humphrey, the Conveyancer, as Queen's Counsel, and Mr. Serjeant Murphy and Mr. Serjeant Byles having patents of precedence.

MIDDLE TEMPLE LECTURES.

The lectures on jurisprudence and civil law at the Middle Temple, we understand, will commence on Monday the 9th November, at a quarter past 7 o'clock in the evening, in the Middle Temple Hall. The lectures are to be open to students of all the Inns of Court, upon application to the under-treasurer.

LECTURES AT THE INCORPORATED LAW SOCIETY.

The articulated clerks and others who have subscribed to the lectures at this society are unusually numerous. The attention which has been excited to the necessity of a higher degree of legal education than has heretofore prevailed has probably occasioned the increased attendance. The number of members of the society who exercise their right of attending, is also greater than formerly.

ADMISSION OF SOLICITORS AT THE ROLLS.

The Master of the Rolls has appointed Wednesday, the 18th Nov., at the Rolls House, Chancery-lane, to swear in the candidates for admission on the Roll of Solicitors for this term. This will allow time for the examination and admission in the Common Law Courts of nearly all the candidates. The few whose articles expire after that day, but before the end of the term, may be sworn in at Westminster by special permission.

FURTHER PROROGATION OF PARLIAMENT.

The House of Lords met on the 4th inst., and parliament was prorogued by commission to the 12th January, but without the words "for the dispatch of business." There will, therefore, in all probability, be a further adjournment to the end of January or beginning of February.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Law of Attorneys.

[The plan of subdividing the Digest, enables us conveniently to place before our readers the points decided from time to time under each general head of Law and Practice; and we commence a New Series with the Law of Attorneys, and shall follow it with the cases relating to Costs: two subjects of very general interest and importance to our readers.]

ARTICLED CLERK.

Commencement of service under discretion given by 6 & 7 Vict. c. 73, s. 9.—Where the attorney filing the affidavit under 6 & 7 Vict. c. 73, s. 8, had omitted to state therein that he had been duly admitted an attorney, as expressly required by that act. The court, after the lapse of six months, allowed a supplemental affidavit to that effect to be filed; and the service of the articulated clerk to be computed from the date of the articles, under the discretionary power given by the 9th section. *Ex parte Robert Bruce Fraser*, 32 L. O. 278.

AUDIENCE.

Barrister.—Exclusive Audience at Sessions.—The court refused to grant a rule for a *certiorari* in order to bring up an order made by justices at quarter sessions, that exclusive audience should be granted to barristers there at

all times when four barristers were present. *The Queen v. The Justices of Denbighshire*, 32 L. O. 323.

BILL OF COSTS.

Name of court in which business done.—Under stat. 2 Geo. 2, c. 23, s. 23, an attorney's bill for work and disbursements in a suit, must specify the court in which the suit was. *Lewis v. Primrose*, 6 Q. B. 265.

CERTIFICATE.

Costs.—Where the solicitor whose name appeared to the bill on behalf of the plaintiff, had not taken out his certificate, the court upon motion to take the bill off the file for irregularity, ordered the name of another solicitor to be substituted, and gave special directions for ensuring accuracy, and *bona fides*,—ordering the plaintiff, and the party whose name had been used as solicitor to the bill, to pay the costs of the application. *Richardson v. Moore*, 32 L. O. 516.

CLERK TO MAGISTRATES.

In an application at petty sessions for an order in bastardy, an attorney acted as clerk to the magistrates, and as attorney to the person against whom the order was applied for. The case was adjourned, on the second hearing an order was made, but the witnesses were not re-sworn on this occasion. The attorney gave notice of appeal, and took the objection in the grounds of appeal, that there was no re-swearing of the witnesses. The order was abandoned, and after payment of reasonable costs a second order was applied for, when the same attorney objected to the jurisdiction of the magistrates to make a second order, the former one being still in existence. The court granted a rule *nisi*, calling upon the attorney to show cause why he should not answer the matters in the affidavit. *In the matter of —*, 32 L. O. 302.

LIEN.

1. *Title deeds.*—The mortgagee of lands handed over the deeds to his attorney. The mortgagor paid the principal and interest, and the lands were reconveyed to him.

Held, that the attorney could not retain the deeds against him, as a security for the expenses of the transaction due from the mortgagee to the attorney :

And that the mortgagor having, under protest, paid such expenses to the attorney in order to get the deeds back, might maintain *assumpsit* for money had and received against the attorney for money so paid :

And that the attorney was a principal in the transaction, and could not allege that the action should have been brought against the mortgagee. *Wakefield v. Newbon*, 6 Q. B. 276.

Cases cited in the judgment : *Hollis v. Claridge*, 4 Taunt. 807 ; *Skene v. Beale*, 11 A. & E. 983, 991 ; *Parker v. Great Western Railway Company*, 7 M. & G. 253, 252 ; *Smith v. Sleep*, 12 M. & W. 585 ; *Ashmole v. Wainwright*, 2

Q. B. 837 ; *Bamford v. Shuttleworth*, 11 A. & E. 926.

2. *Certificated conveyancer.*—A certificated conveyancer has no lien on deeds, &c. delivered to him for work done "with and in respect of" them.

Semble, per *Alderson*, B., otherwise if the work is done upon them. *Steadman v. Hockley*, 32 L. O. 590.

3. *Arbitration.*—*Bankruptcy.*—A cause and all matters in difference between A. and B., were referred, C. consenting to be made a party to the reference. The arbitrator directed a verdict to be entered for B., but directed that C. should pay to A. 52l. 10s., and costs of the reference and award. A. having become bankrupt, C. declined to pay without authority from A.'s assignee : *Held*, that A.'s attorney, who had a lien upon the award for his costs, was not entitled to an order upon C. under the 1 & 2 Vict. c. 110, s. 18. *Holcroft v. Munby*, 7 M. & G. 843.

NEGLIGENCE.

An attorney being employed to conduct a prosecution, gave an undertaking that he would not charge full fees, but that he would only charge the money actually expended in conducting the business. In consequence of the negligent conduct of the attorney the indictment failed.

Held, that he could not, under such circumstances, recover back the money so expended. *Lewis v. Samuel*, 32 L. O. 471.

PRIVILEGE.

1. *Plea in abatement.*—The rule, that a privileged person loses his privilege if sued with an unprivileged person, is not affected by the 2 W. 4, c. 39.

A. and B., both being attorneys of B. R., B. being also an attorney of C. P., were sued in the latter court.

Held, that A. could not insist upon his privilege of being sued in B. R. *Rastrick v. Beskwith*, 7 M. & G. 905.

2. *Attorney of two courts.*—A defendant who is an attorney of two of the superior courts may be sued in either, at the option of the plaintiff. *Watford v. Fleetwood*, 14 M. & W. 449.

See *Rastrick v. Beckworth*, 14 Law J., C. P. (N. S.) 1.

RETAINER.

In an action by A. and B., who were attorneys, against surveyors of highways of a parish, for business done in procuring an order of magistrates to divert highways in the parish, and on an appeal against that order, it appeared that A. and B., in their bill, charged for drawing a resolution of a parish meeting held before the order was applied for, which resolution stated, that the order was to be applied for "at the instance and at the expense of the B. & G. Railway Company." *Held*, that A. and B. must be considered to have undertaken the business on those terms, unless there was an express employment of them by the defendants, and on their credit, of which there ought to be direct proof. *Spurrier v. Allen*, 2 C. & K. 210.

TAXATION.

1. *Jurisdiction of common law courts.*—*"Person liable"* under 6 & 7 Vict. c. 73, s. 38. —*Seem*, that under the Attorneys and Solicitors Act, (6 & 7 Vict. c. 73, s. 37,) all the common law courts therein mentioned have a common jurisdiction to refer for taxation an attorney's bill for business done in any of them.

Where a surveyor of highways within a parish employed an attorney to conduct an indictment for an obstruction of one of the highways, and to transact other business, and paid his bill out of the monies raised by the highway-rate: *Held*, that the rate-payers were not persons "liable to pay," within the meaning of the statute 6 & 7 Vict. c. 73, s. 38, and could not, therefore, apply for a reference of the bill to taxation. *Barber, in re*, 14 M. & W. 720.

Case cited in the judgment: *In re Carew*, 14 Law J., N. S., Chanc. 100.

2. *Costs out of pocket.*—An attorney on being retained to bring an action, gave the following undertaking:—"Should the damages or costs not be recoverable in this action, under circumstances, I shall charge you costs out of purse only." The plaintiff obtained a verdict, with 600*l.* damages, for which sum and costs, judgment was entered up. The defendant took the benefit of the Insolvent Act, and the dividend on his estate awarded to the plaintiff, was 27*l.* odd. The Master, on taxation, allowed the attorney costs out of pocket only, but referred the matter to a judge, who directed the taxation of costs out of pocket only. A second summons was taken out before the same judge to review the taxation, and dismissed: *Held*, first, that the party was not precluded from appealing to the court; and secondly, that the taxation was incorrect: that the attorney only meant to guarantee the goodness of the suit, not the solvency of the defendant. *Stretton, in re*, 3 D. & L. 278.

3. *Highway.*—*Surveyor.*—Where an attorney is retained by a surveyor acting under the Highway Act, the parties who contribute to a rate out of which the attorney's bill is paid, are not "persons liable to pay the bill;" so as to enable them to apply for its taxation, under the 6 & 7 Vict. c. 73. *Barber, in re*, 3 D. & L. 244.

Case cited in the judgment: *In re Carew*, Rolls Ct., Dec. 12, 1841.

UNDERTAKING.

When summarily liable.—An attorney may, upon motion, be ordered to pay money pursuant to his undertaking, and to pay the costs of the application, though three years have elapsed since the money became due. *In re Robert Swan, gent., one, &c.*, 32 L. O. 229.

UNQUALIFIED PRACTITIONER.

Indictment.—*Misdemeanor* under 6 & 7 Vict. c. 73.—It is an indictable offence under the 6 & 7 Vict. c. 73, s. 2, to practise as an attorney without being duly qualified.

In a matter of public concern where an act of parliament says that a particular act shall

not be done, a disobedience to that act is itself an indictable offence.

Where in the same clause in an act of parliament there is a general prohibition declared, and some particular penalty is inflicted, then the proceeding for a violation of the prohibition must be according to the specific remedy pointed out; but where the prohibition is in general terms, a violation of the prohibition is an indictable offence, although a particular penalty may be given in a subsequent clause in the same statute. *The Queen v. Buchanan*, 32 L. O. 155.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

In re Pinder. Nov. 4, 1846.

TAXATION OF ATTORNEY'S UNSIGNED BILL A MONTH AFTER DELIVERY.

The Lord Chancellor in this case, (of which we shall give a full report hereafter,) on appeal from the Master of the Rolls, said, that the 6 & 7 Vict. c. 73, required that a solicitor's bill should be signed, or equivalent to it, before he could sue. This was for the protection of the client, in order that he might have timely and distinct notice of the demand; but did not restrict the taxing solicitors' bills to such only as were prepared in that form. The opinion, therefore, of the Master of the Rolls, which was also consistent with the practice, was correct, namely, that a client might have a solicitor's bill taxed which had been delivered to him, although not signed by such solicitor.

The point raised, that the taxation was after the month from delivery of the bill, made no difference in the case: the only distinction drawn by the statute being, that within the month the court had no discretion in the matter, but after that time might grant the order to tax, with such restrictions as it should think necessary.

Vice-Chancellor of England.

Russell v. Nicholls.—Michaelmas Term, 1846.

MARRIAGE OF INFANT WARD.—SETTLEMENT.

The court will direct a settlement on the application of the mother of an infant ward, who has married without a settlement being extended, although the mother may have consented to the marriage, and an assignment may have been made by the ward and her husband after the marriage to a third party.

In this case a petition was presented by the mother of an infant who was entitled under her grandfather's will to certain property on her attaining the age of 21, and who had married shortly after she had attained the age of 17, praying for the discharge of a stop order that had

been obtained by a Mr. Arden, to whom the daughter and her husband had after the marriage assigned the daughter's instalment, and for a settlement.

Mr. Stuart and Mr. Hallett for the petitioner.

Mr. Toller, for the respondents, contended that, as the interest of the daughter was only contingent, she could not have been made a ward of Chancery, and that as the mother was only in the position of a stranger she had no right to present the petition. Besides which she had consented to the marriage.

The Vice-Chancellor said, whether the property of an infant were vested or contingent, she might in either case be made a ward of court, and the court would take care of her property. It appeared that the young lady married shortly after she had attained the age of 17, and whether the mother had consented to the marriage or not was immaterial: she had a perfect right to present a petition for a settlement, and this she had done. In 1844, Mr. Arden by indenture took a life interest by assignment from this young lady, and in that assignment there was a reference to the proceedings in the cause, so that he might have ascertained the young lady's position. He then obtained an order on a petition by himself, that no part of the fund should be paid over without notice to him. This was a more extensive order than he was entitled to, and must be discharged with costs, and as there was nothing special in the case, there should also be the usual order for a reference to the master to ascertain whether a marriage had taken place and to approve of a proper settlement.

Queen's Bench.

(Before the Four Judges.)

La Forest v. Wall. Michaelmas Term, 1846

PLEADING.—REPLICATION.—DE INJURIA.

In an action on several bills of exchange against the defendant as occupier, the defendant pleaded, that they were accommodation bills, and that the plaintiff was an holder without value. Replication *de injuria*. After issue joined the defendant struck out the similitur and demurred to the replication; the demurrer was afterwards struck out by a judge at chambers as frivolous, the case went down to trial, and a verdict found for the plaintiff. On application to set aside the order of the learned judge and all subsequent proceedings, on the ground that the replication was bad; the court held that the replication was good, and that they would not interfere with the discretion exercised by the judge at chambers.

THIS WAS an action on several bills of exchange accepted by the defendant, who pleaded that the bills were accepted for the accommodation of one Clifton, and that the plaintiff was a holder of the bills without any value whatever. To this plea the plaintiff replied *de in-*

juria. The issue was made up and notice of trial was given. The similitur was afterwards struck out, and the plaintiff demurred to the replication as not being applicable under the circumstances. The case came before the Chief Baron at chambers, when he made an order to strike out the demurrer as frivolous. The case afterwards went down to trial, and a verdict was found for the plaintiff.

Mr. Boville now moved to set aside the order made by the Chief Baron and all the subsequent proceedings, on the ground, that the replication *de injuria* was bad on demurrer, and that the demurrer ought to have been allowed. He relied on the case of *Purchell v. Sulter*, for the purpose of showing that the replication was bad, the rule then being laid down that *de injuria* only applies to matter of excuse or justification, and not to matter of excuse.

Lord Denman, C. J. It seems to me this is a good replication, and I think we ought not to interfere with the discretion which has been exercised by the learned Chief Baron.

Coleridge, Wightman, and Erle, J.s, concurred.

Rule refused.

The Queen v. The Justices of Radnor. Trinity Term, 1846.

MANDAMUS.—COSTS OF MAINTENANCE UNDER THE 9 GEO. 4, C. 40.

On the 13th of November, 1843, an order was made by two justices of the county of Radnor, under the 9 Geo. 4, c. 40, for the removal of an insane pauper to an asylum in Shrewsbury. On the 30th of November an order was made by the same justices, adjudging the pauper to be settled in H., and directed that parish to pay 10s. a week for the support of the pauper in the asylum. H. appealed against this order, and the sessions for the county of Radnor, on the 11th of April, 1844, confirmed the order, subject to a case which came on for argument on the 31st of January last, when this court quashed the order of sessions.

The court refused a mandamus to compel the justices of the county of Radnor to make an order on the county treasurer to repay the parish of H. the money they had expended in support of the pauper in the asylum from April, 1844, to January, 1846.

By an order of two justices, dated the 30th November, 1843, the settlement of J. P. Wood, an insane pauper, was adjudged to be in the parish of Heyop, in the county of Radnor, and the overseers of that parish were directed to make certain weekly payments to the keeper of an asylum for the reception of insane persons at Shrewsbury, in the county of Salop. On appeal the sessions confirmed the order, subject to a special case. The case was set down in the Crown Paper, and came on to be heard at

the sittings after last Hilary Term, when the court quashed the order of sessions, on the ground that the order ought to have been made by two justices of the county in which such asylum was situate.

In Easter Term last a rule nisi was obtained calling upon the justices of Radnor to show cause why a writ of mandamus should not issue, commanding them to pay or order to be paid to the churchwardens and overseers of the parish of Heyop, out of the county rates of the said county, the sum of 50*l.* 10*s.*, being the sum paid by the said parish for the maintenance, medicine, and care of the said insane pauper between the 30th of November, 1843, and the 31st of January, 1846.

Mr. *H. V. Williams* showed cause. The order of justices was made under the 9 Geo. 4, c. 40, s. 38, which enables justices to inquire into the settlement of insane paupers, and to remove them to a public hospital or a private asylum, and if the settlement can be ascertained, the parish where such pauper is settled is to be liable for the maintenance of the pauper whilst in such hospital; but if the settlement of the lunatic cannot be ascertained, then by the 41st section the justices are enabled to make an order on the treasurer of the county within which such insane pauper may be found, out of the county rates for the maintenance of such pauper in the hospital or licensed house. This rule has been obtained on the assumption that the legislature has made the county funds primarily liable for the support of insane paupers, whereas the liability of the county only attaches where their place of settlement cannot be ascertained; for when such settlement is discovered the parish is made liable for expenses incurred while the pauper is living in an asylum.

Mr. *Pashley*, contra. The cases on this subject go to show that the statute 9 Geo. 4, c. 40, throws the primary liability of supporting insane paupers on the county fund: *Regina v. The Justices of Kent*,^a *Regina v. Darton*.^b Money, therefore, has been paid by this parish in case of the county fund, which they are entitled to have refunded by some means, and the remedy by action not being available in such case, the court will grant a mandamus. Money paid under a void authority may be recovered back, *London v. Hooper*;^c and the parish officers of Heyop having paid a sum of money under an order of justices which they could not disregard, but which was afterwards quashed by this court, are in the same situation as if no such order had ever been made. The case in principle is much the same as the liability of a parish to pay for surgical aid and attendance afforded to casual poor, although such attendance was not given at the request of the parish.

Lord Denman, C. J. I think this rule must be discharged. An analogy has been drawn from the liability of a parish to pay for surgical

aid afforded to casual poor; but there is no authority for saying, that in case of non-payment the party might come to this court for a mandamus to compel the parish to pay.

Mr. Justice Pateson. Argue the case as you will, it comes to this:—the 41st section directs that the money can only be paid under an order of two justices, and they have failed to make such an order. I do not see how we can grant a mandamus to supply that defect. We cannot anticipate that the justices would omit to do their duty.

Mr. Justice Williams. We ought to have some authority to satisfy the court that the justices of Radnor have power to make an order to pay a sum of money out of the county fund. The parish officers of Heyop seem to say, that because they have paid a sum of money which they think they ought not to have paid, this court will grant a mandamus to compel the repayment of such money; but I do not think that any authority has been shown for such an application.

Rule discharged.

Queen's Bench Practice Court.

Bushell v. Slack. Michaelmas Term, Nov. 2, 1846.

JUDGMENT CA. NON.—PEREMPTORY UNDERTAKING.

Where a rule for judgment as in case of a nonsuit, had been discharged on a peremptory undertaking to try within a certain time, and the trial took place after the expiration of the time, but before the court could be moved for a rule for judgment for the default, the court granted a rule in the alternative for judgment as in case of a nonsuit, or for setting aside the trial.

E. H. Woolrych moved for a rule absolute for judgment as in case of a nonsuit, the defendant not having proceeded to trial pursuant to his peremptory undertaking. The undertaking had been to try within two months, which expired on the 12th August. Notice of trial had been given for the 10th August, on which day the defendant attended with witnesses, but the plaintiff did not appear. A fresh notice of trial having been served on the 11th August for a day subsequent to the expiration of the two months, the defendant refused to appear, and a verdict passed for the plaintiff for 6*l.* The writ of trial being returnable before the present term, the defendant applied to a judge at chambers and obtained an order for staying proceedings in the action until the present application should have been made to the court. It was now urged that the plaintiff's default was complete on the 10th August, and could not be purged by the subsequent trial. Reference was made to *Lumley v. Dubourg*, 14 Mee. & W. 295; and *Rogers v. Vandercom*, 15 L. J., N. S. 313; and it was submitted that the defendant was entitled to a rule absolute.

Pateson, J., doubted whether the trial, al-

^a 2 Q. B. R. 686.

^b 12 A. & E. 78.

^c Cooper, 419.

though subsequent to the appointed period, could be considered a nullity, and suggested that it would be the safer course to take the rule in the alternative, either for judgment as in case of a nonsuit, or to set aside the trial.

Rule accordingly.

Exchequer.

Triston and another v. Barrington. Michaelmas Term, Nov. 3rd, 1846.

PLEA OF PAYMENT.—DAMAGES.—DEBT.

To debt for work and labour, &c., the defendant pleaded that he paid to the plaintiff divers sums in satisfaction and discharge of the "causes of action" in the declaration mentioned. Held, that the term "causes of action" meant both debt and damages, and that a judgment signed for the latter was irregular.

THIS was an action of debt for work and labour, money paid, and money due on an account stated. The defendant pleaded, "that after the accruing of the causes of action in the declaration mentioned, and before the commencement of the suit, he paid to the plaintiff and the plaintiff accepted and received divers sums of money amounting to the sum of 10,000*l.* in full satisfaction and discharge of the causes of action in the declaration mentioned." The plaintiff signed judgment for the damages unanswered by the plea. A summons was taken out to set aside the judgment, with costs, an *Platt, B.* made an order accordingly.

Hurlstone moved for a rule to show cause why the order of *Platt, B.* should not be rescinded. The point was before the court in the case of *Lowe v. Steele*, L. O. ante, p. 375, L. J. vol 15, p. 244. The only difference is, that there it was a plea of payment into court. The judge at chambers ruled that the present case was distinguishable, inasmuch as in *Lowe v. Steele* the plea pointed to the debt alone. The question then was as to the meaning of the term "causes of action." In debt the cause of action is the sum demanded; the damages are merely collateral, and in most cases nominal, to enable the plaintiff to obtain costs, as the statute of Gloucester, 6 Ed. 1, c. 1, only gives costs where a plaintiff recovers damages. The ancient forms of writs show, that in the action of debt the "cause of action" is the debt alone. Before the uniformity of Process Act, a plaintiff who commenced his action by original was bound to state the "cause of action" in the writ, and on referring to the forms of writs collected in Stephen on Pleading, 2nd ed., it will be found that the writ of debt contains no mention of damages. Besides, if the damages were a part of the "cause of action" in debt, the plea of *nunquam indebitatus* would be bad, inasmuch as it only answers the debt.

Parke, B. In this case there ought to be no rule. The term "cause of action" means both debt and damages.

Alderson, B. In the action of debt the plaintiff sues not only for the debt, but also for its detention, the result of which is damages. Then the term "cause of action" includes everything that the plaintiff goes for.

Rule refused.

Court of Kibitch.

Ex parte Gover re Humphreys. August 1, 1846.

ASSIGNEE.—BIDDING AT SALE OF BANKRUPT'S EFFECTS.

Where an assignee, without leave, bids at the sale by auction of the bankrupt's property, although for the purpose of raising the biddings merely, the court will direct a resale, ordering such assignee to make good the difference, if any, between the results of the two sales.

THIS was the petition of a creditor of the bankrupt, for the purpose of obtaining the order of the court that the assignee, who had bought in part of the bankrupt's property at a sale by auction, might be held to his bargain. The bankrupt was the proprietor of an hotel in the Haymarket, which was held subject to a mortgage. The hotel had been advertised for sale by public auction, and at this the biddings had been offered up to 600*l.*; one of the assignees (the respondent) bade 650*l.* A protest was entered by the mortgagee against the right of the assignee to bid at all, without leave of the court. The assignee ultimately bade 670*l.*, for which sum the hotel was knocked down to him.

Mr. Shapter, for the petitioner, cited *ex parte Lewis*, 1 Glyn. & J. 67.

Mr. Forster, for the mortgagee, cited *ex parte Cudon*, 3 Mont. D. & De G. 302.

Mr. Swanston and *Mr. Rogers* for the respondent, (the assignee.) The bidding had been *bona fide* for the benefit of the estate.

The Chief Judge inquired whether the respondent wished for a resale.

The counsel stated that he did.

The Chief Judge.—Then let the property be resold, and let the assignee make good such loss, if any, as may be occasioned by the resale.

CHANCERY CAUSE LISTS.

Michaelmas Term, 1846.

Lord Chancellor.

APPEALS.

Day to	Strickland	Strickland	} appeal
be	Ditto	Boynton	
fixed	Ditto	Strickland	
	Vandeleur	Blagrove	appeal
To fix	Coore	Lowndes	appeal
a day.	Minor	Minor	{ 2 appeals
To fix	Ditto	Ditto	
a day.	Dalton	Hayter	appeal
To fix			
a day.			

To fix a day.	{ Attorney-Gen.	{ Masters & War- dens, &c. of the City of Bristol. }	appeal
S. O. Black		Chaytor do.	
S. O. Johnson		Reynolds fur. dirs. by ord.	
Lord		Wightwick	appeal
Carmichael		Carmichael	do.
Hawkes		Howell	do.
Heming		Swinerton	do.
Trail		Bull	do.
Abated Youde		Jones	do.
Wrightson		Macaulay	do.
Lawrence		Bowle	cause by order
Gompertz		Gompertz	3 causes appeal
{ Morris		Howes }	appeal
{ Horsman		Abbey }	
Thomas		Blackman	do.
Bonds		Slyman	do.
Cooper		Pitcher	do.
Salkeld		Johnson	on app. read.
Booth		Creswicke	appeal
Forbes		Leeming	do.
Andrews		Lockwood	do.
Stocken		Dawson	4 causes, do.
Watts		Hyde	appeal
Walford		Adie	do.
Morison		Morison	do.
Eyre		Green	do.
Davis		Chanter	do.
Ansley		Cotton	do.
Colombino		Chichester	do.
Macmahon		Burchell	do.
Duke of Leeds		Earl Amherst	do.
Attorney-Gen.		Mayor, &c., of Newcastle- upon-Tyne	appeal
Prendergast		Lushington	do.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

S. O., Moore v. Mitchell, 2 dems.
 Button v. Simpson, dem. pt. hd.
 Kingham v. Lee, dem.
 Baldwin v. Damer, dem.
 Finden v. Stephens, dem.
 The Company of Proprietors of the Grand Junction Canal v. Dimes.
 Bower v. Scott, reh.
 Walker v. Watkin, by order.
 Parker v. Day.
 Ditto v. Goude.
 Johnson v. Forrester, fur. dirs.
 Terry v. Wachter.
 Simpson v. Holt, fur. dirs. and costs.
 Garrod v. Moor.
 Smale v. Bickford, 2 causes.
 Peacock v. Kernot.
 Morrison v. Watkins.
 Wright v. Barnwell, exons. and fur. dirs.
 Greenway v. Buchanan.
 Walton v. Morrirt.
 Dobson v. Lyle, fur. dirs. & costs.
 Parker v. Hawkes, exons.
 Davison v. Bagley.
 Giffard v. Withington.
 Daniel v. Hill.
 Insole v. Featherstonhaugh.
 Lane v. Durant, exons. and fur. dirs.
 Pocock v. Johnson.
 Cope v. Lewis.
 Evans v. Hunter.
 Attorney-Gen. v. Trevelyan.

Stert v. Cooke.
 Hodgkinson v. Barrow, fur. dirs. and costs.
 Colbourn v. Coling.
 Hickson v. Smith, at deft.'s request.
 Palmer v. Pattison fur. dirs. and costs.
 Lee v. Ryle, fur. dirs. and costs.
 Minter v. Wraith, fur. dirs. and cause.
 Hemming v. Spiers, exons.
 Chambers v. Waters, exons.
 Smith v. Robinson.
 Foster v. Vernon, fur. dirs. and costs.
 Vale v. Sherwood, 7 causes, ditto.
 Haffenden v. Wood, exons.
 Branscomb v. Branscomb, fur. dirs. and costs.
 { Stammers v. Halliby, 3 causes, fur. dirs.
 { Ditto v. Batty, by order,
 Gray v. Gray, 3 causes, fur. dirs.
 Dorville v. Wolff, fur. dirs. and costs.
 Richards v. Patterson, fur. dirs. and costs.
 Adam v. Burham, 2 causes.
 Beatson v. Bentson.
 Woodman v. Madgen, fur. dirs. and costs.
 Attorney-Gen. v. Pearson, exons. and fur. dirs.
 Dawson v. Chappell, fur. dirs. and costs.
 Wait v. Horton ditto
 Montague v. Cator, fur. dirs. and cause. "]
 Groom v. Stinton, 4 causes.
 Corbett v. Limbrick, fur. dirs. and costs.
 Baxter v. Abbott, fur. dirs. and costs.
 De Beauvoir v. De Beauvoir, fur. dirs. and costs.
 Beale v. Warder, rehearing.
 Turner v. Sincock, fur. dirs. and costs.
 Booth v. Lightfoot, fur. dirs. and costs.
 Ludlow v. Guilleband, fur. dirs. and costs.
 Howell v. Sner.
 Af. Term. Attorney-Gen. v. East India Company.
 Roberts v. Cardell, exons.
 Warwick v. Richardson, exons. and fur. dirs.
 Morgan v. Kingdon, fur. dirs. and costs.
 Lewis v. Hinton, fur. dirs. and costs.
 Wilson v. Williams.
 Robotham v. Amphlett, exons.
 Poole v. Troughton.
 Ellison v. Clark.
 Bailiff, &c. of Bridgnorth v. Collins, fur. dirs. and costs.
 Gaches v. Warner, 2 causes.
 Frant v. Deffell, cause and petn.
 Birch v. Joy, fur. dirs. and costs.
 Tarte v. Phillips.
 Bilton v. Frewheela.
 Atkinson v. Glover.
 Mayor, &c. of Rochester v. Lee.
 Day v. Slade.
 Pennyfather v. Pennyfather, 2 causes.
 Radcliffe v. Readlett.
 Lufkins v. Lufkins, fur. dirs. and costs.
 Hollis v. Bryant, 2 causes.
 Nightingale v. Goulbourn, fur. dirs. & costs.
 Williams v. Jones ditto.
 Howard v. Kirk.
 Reddish v. Howard, 2 causes.
 Glascott v. Long.
 Green v. Bailey.
 Atkins v. Harton, fur. dirs.
 Straker v. Wilson.
 White v. Briggs, exons. 3 sets, and fur. dirs.
 Bradley v. Teale.
 Smith v. Smith, 2 causes.
 Parkin v. Taylor.
 Warde v. Hill.
 Damer v. Portarlington, 2 causes.
 Greenham v. Greenham, fur. dirs. and costs.
 Bellingier v. Blagrave.
 Burrow v. Hardey, fur. dirs. and costs.

Finch v. Seeker.
 Crommetin v. Earl of Belfast.
 Cholmondeley v. Cholmondeley, fur. dirs. and costs.
 Cotgreave v. Cotgreave.
 Middleton v. Elliot, fur. dirs. & costs.
 Hemming v. Dingwall.
 Booker v. Clarke, fur. dirs. and costs.
 Bannister v. Ellis.
 Hyde v. Neate, exons.
 Hall v. Hugonin, fur. dirs. and costs.
 Milne v. Loe ditto.
 Bownass v. Abbott, exons.
 Martindale v. Hayton.
 Langston v. Cozens, fur. dirs. and costs.
 Mapp v. Elcock ditto.
 Webb v. Enticknop ditto.
 Kortright v. Macqueen ditto and cause.
 Hammer v. Hammer ditto and cause.
 Levsey v. Leicester, fur. dirs.
 Rentell v. Scales.
 Myers v. Macdonald, 2 causes.
 Wilson v. Wilson, exons., 2 sets.
 Garratt v. Lancesfield, fur. dirs.
 Gregory v. Wade.
 Hodgson v. Hodgson.
 Ingonville v. Blackstock, fur. dirs.
 Amey v. Walker, 2 causes.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Brighton v. North, dem.
 Cooper v. Scott, ditto.
 Attfield v. Williams, exons.
 Apperley v. Page, dem.
 Taylor v. Thomas, plea.
 Dodsworth v. Lord Kinnard, at request of deft.
 Ditto v. Ditto.
 Taylor v. Taylor.
 Malins v. Price.
 S. O., Gawen v. Gawen, fur. dirs. and costs.
 S. O., Gibbs v. Waters.
 S. O., May v. Cooke.
 Dyer v. Crick.
 Massey v. Johnson.
 Hulbert v. Hulbert.
 Sowerby v. Pontop Railway Company.
 Ditto v. ditto.
 Sabire v. Callbeck.
 Croxton v. Croxton.
 Taylor v. Cooper.
 Wilson v. Parker.
 Twenlow v. Bullock, exons.
 Pascoe v. Sanders, 2 causes.
 Woodward v. Miller, fur. dirs. and costs.
 Shaw v. Hill.
 Coward v. Coward.
 Beach v. Rowley.
 Francis v. Francis, 2 causes.
 Edwards v. Browne, fur. dirs. and costs.
 Ballard v. Bateman.
 Chambers v. Wilton.
 Westwood v. Slater, fur. dirs. and costs.
 Cuming v. Slater, cause by order.
 Glanville v. Taunton.
 Garner v. Swainson.
 Davies v. Davies, fur. dirs. and costs.
 Tompsett v. Wickens.
 Stewart v. Bushby, fur. dirs. and costs.
 Bright v. Clark.
 Beard v. Mottam.
 Milne v. Bamford, fur. dirs. and costs.
 Mostyn v. Mostyn ditto.

Rogers v. Seare.
 Higginson v. Levy.
 Jones v. Jones.
 Grayson v. Deakin.
 Hodgson v. Shaw, fur. dirs. and costs.
 Weston v. Radford.
 Dunston v. Paterson, fur. dirs. and costs.
 Quarrill v. Binmore ditto.
 Topping v. Howard.
 Shelswell v. Preedy.
 Roakes v. Manser, 2 causes.
 Wright v. Taylor, fur. dirs. and costs.
 Sanford v. Sanford ditto.
 Kersbaw v. Clegg ditto.
 Geary v. Norton.
 Parker v. Morrell, fur. dirs. and costs.
 Eversfield v. Troup.
 Wroughton v. Colquhoun, fur. dirs. and costs.
 Newenham v. Pemberton.
 Bolthee v. Collier.
 Holmes v. Trappes.
 Wallworth v. Cartwright.

Vice-Chancellor Stirling.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Hunter v. Macklew, objection as to parties.
 To fix a day, Lowes v. Lowes, fur. dirs. and costs.
 Sayers v. Lecon, fur. dirs. pt. hd.
 Plowden v. Thorpe.
 After Term, East India Company v. Coopers' Company.
 Campbell v. London and Brighton Railway Co. pt. hd.
 Blair v. Bromle.
 Duncombe v. Levy.
 Fraser v. Jones.
 Leigh v. Earl Ballcarra.
 Dale v. Hamilton.
 Bostock v. Shaw.
 Emerson v. Emerson.
 Hammon v. Sedgwick.
 Warner v. Hodgson, 2 causes.
 Kirby v. Mash.
 Pennington v. Buckley.
 Tapperell v. Taylor.
 Parks v. Odill, 2 causes.
 Carlisle v. Elliot.
 Handford v. Handford.
 Maxwell v. Kibblethwaite, 2 causes.
 Porter v. Porter.
 Scott v. Bealey.
 Starkey v. Blake.
 Tolson v. Dykes, 3 causes.
 Ogle v. Hansard.
 Knight v. Knight, exons. 2 sets.
 Lewis v. Thomas.
 Bell v. Alexander.
 Bull v. Pritchard.
 Dobson v. Land.
 Winter v. Winter, fur. dirs. and costs.
 Coates v. Hammond, 2 causes.
 Shuttleworth v. Bengough, 2 causes.
 Champion v. Banks.
 Worley v. Frampton, exons. and fur. dirs.
 Dawes v. Betts.
 Wood v. Rowcliffe.
 Attorney-General v. Lucas, exons.
 Stinton v. Taylor.
 Beach v. Beach, fur. dirs. and costs.
 Henson v. Blackwell ditto.
 Moss v. Leigh }
 Ditto v. Whitley, }^c

Lake v. Stewart.
 Blundell v. Mills.
 Methold v. Turner.
 De. n v. Hickenbotham.
 Whitlow v. Dilworth, 2 causes.
 Routledge v. Gibson.
 Bachelor (pauper) v. Middleton.
 Payne v. Coles.
 Letts v. The London and Blackwall Railway Company.
 The London and Blackwall Railway Company v. Letts.
 Chase v. Morris, sur. dirs. and costs.
 Crockett v. Crockett, ditto and petition.
 Stephenson v. Everatt, sur. dirs. and costs.
 Tyler v. Lee ditto.
 Pringle v. Smith.
 Justice v. Langster.
 Marsh v. Kingdom.
 Raby v. Ridehalgh.
 De Sola v. Mesnard.

COMMON LAW CAUSE LIST.

Queen's Bench—Crown Paper.

Michaelmas Term, 1846.

For Saturday, Nov. 7.

England.—J. N. Ryalls v. The Queen in error.
 Middlesex.—The Queen v. London, Westminster, and Vauxhall Iron Steam Boat Company.
 Middlesex.—The Queen v. The Inhabitants of Watford, Herts.
 Bucks.—The Queen v. The Inhabitants of Little Marlow.
 Surrey.—The Queen v. The Inhabitants of Oron-dall, Hants.
 Cornwall.—The Queen v. The Inhabitants of Mylor.
 England.—The Queen v. The Commissioners of Stamps and Taxes.
 Middlesex.—The Queen v. The Inhabitants of St. Paul, Covent Garden.
 London.—Charles White v. The Queen in error.
 Dorset.—The Queen v. The Churchwardens, &c., of Anderson.
 Cumberland.—The Queen v. The Churchwardens, &c., of Holme, St. Cuthbert's.
 Middlesex.—The Queen v. Edward Westbrook and others.
 Carnarvonshire.—The Queen v. The Churchwardens, &c., of Bangor.
 Middlesex.—The Queen v. The Inhabitants of St. Anne, Westminster, (de Maria Jones.)
 Middlesex.—The Queen v. The Inhabitants of St. Anne, Westminster, (de G. Wood.)
 Worcestershire.—The Queen v. The Inhabitants of St. Peter, Droitwich.
 London.—The Queen v. Henry Bateman.
 Devon.—The Queen v. The Inhabitants of East Stonehouse.
 Devon.—The Queen v. The Inhabitants of Wide-comb-in-the-Moor.
 England.—The Queen v. The Eastern Railway Company.
 Ely.—The Queen v. The Inhabitants of Mendham.
 Lancashire.—The Queen v. The Inhabitants of Blackburn.
 Carnarvon.—The Queen v. The Churchwardens, &c., of Bangor, (orders.)
 Kent.—The Queen v. Henry Everist.
 Warwickshire.—The Queen v. The Council of the Borough of Birmingham.

Yorkshire.—The Queen v. The Inhabitants of Marton cum, Grafton.
 Devon.—The Queen v. The Inhabitants of Landkey.
 Bucks.—The Queen v. The Great Western Railway Company.
 Bucks.—The Queen v. The Great Western Railway Company.
 Lincolnshire.—The Queen v. The Inhabitants of Clixby.
 Bolton.—The Queen v. Nathaniel Shipperbottom.
 Surrey.—The Queen v. The Churchwardens, &c., of St. George the Martyr, Southwark, (de Bride-well and St. Thomas.)
 Surrey.—The Queen v. The Churchwardens, &c., of St. George the Martyr, Southwark, (de Bethlem Hospital.)
 Monmouthshire.—The Queen v. The Inhabitants of Hartbury, Gloucester.
 Warwick.—The Queen v. Thomas Collins.
 Worcestershire.—The Queen v. The Inhabitants of Halesowen.
 Lancashire.—The Queen v. The Overseers of the Poor of Township in Oldham Union.
 Yorkshire.—The Queen v. The Justices of the West Riding.
 Somerset.—The Queen v. William Richardson.
 England.—The Queen v. Elias Arnand and another.
 London.—The Queen v. Archibald Douglas, Esq.
 Birmingham.—The Queen v. Thomas Phillips and another, Justices, &c.
 Gloucestershire.—The Queen v. The Inhabitants of Alderley.
 Lancashire.—The Queen v. Thomas Grimshaw.
 Durham.—The Queen v. The Inhabitants of Waldrige.
 Carnarvonshire.—The Queen v. The Inhabitants of Rhoscolyn in Anglesey.

THE EDITOR'S LETTER BOX.

In order to state fully the Contents of the last Volume, with the Title Page and Table of Subjects included in the Analytical Digest of Cases Reported in all the Courts, we have printed an extra half sheet this week, which we beg to present to our readers.

It will be observed, that the half-yearly volume has been increased from 520 to 640 pages, exclusive of the space appropriated to advertisements; and that without any increased charge, the Analytical Digest has been incorporated with the Legal Observer. The recent arrangements also enable us to avoid any tax on our readers for double numbers, appendices, or separate publications of important statutes. They are all comprised within the four corners of our record.

"A Subscriber" wishes to know whether the justices' clerks are not bound to prepare the recognizance under the Poor Law Act on an appeal from a decision at the petty sessions regarding an illegitimate child.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 14, 1846.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

BUSINESS OF THE COURTS.— RAILWAY LITIGATION.

DURING the whole of the first week of Term, the three courts of common law, and the Court of Exchequer, during a part of the present week, have been almost exclusively engaged in hearing motions for new trials, and a considerable proportion of those applications arose out of railway transactions. After Trinity Term, when the daily newspapers were filled with reports of the trial of railway actions, we took occasion to caution our readers against attaching undue weight to the verdicts then delivered, or to the extra judicial observations which were reported to have fallen from the learned persons who presided at those trials. The circumstances surrounding those cases were so unprecedented—so dissimilar—and withal so complicated—it need excite no wonder, if even extraordinary sagacity and the most extensive experience were at fault, when suddenly called upon to direct the application of legal principles to so novel a state of things. In point of fact, the proceedings at *nisi prius* were, in many instances, little more than a hasty collection of materials for the future consideration of the courts, and the views *ventilated* by the judges were rather in the nature of temporary impressions, than deliberate convictions.

The most numerous class of railway cases were those in which goods were alleged to have been provided, or services performed, for the advancement of railway projects, and in all such cases the ten-

dency of juries is to award liberal compensation to the claimants. For several months very little effort was made to check or control the disposition of juries in railway actions. The verdicts were nearly all one way. There were some few cases, indeed, where a judge interposed and non-suited the plaintiff, or authoritatively informed the jury that they must find for the defendant, or where the party sued appeared to be the victim of some fraud, and the sympathies of the jury were powerfully excited in his behalf. In general, however, it appeared to have been assumed as a clear legal proposition, that if a person could be proved to have assented to the publication of his name as a provisional committee-man, he was personally responsible for all the expenses incidental to the formation of a railway company. The apprehension and dismay which the reports of the trials developing this assumed principle created in the minds of those who had thoughtlessly or imprudently allowed their names to be used in the promotion of railway schemes, cannot be easily forgotten. The stimulus and encouragement afforded by those verdicts to intimidation and fraud is but too well known to those who were the dupes. It was a singular feature in the trials to which we have alluded, that counsel and judges appeared to have united in eschewing any reference to legal principles, or to those adjudged cases, to which the bench and the bar are usually so ready to resort on occasions of real or supposed difficulty. It would seem as if some portion of the blind excitement which prevailed amongst the public during the

speculating stage of the railway mania had fallen on the profession in the *litigating* stage: as the fever has subsided, the good sense of the public and the acuteness of the profession seem to have simultaneously returned. It is now more than suspected, that a great majority of the railway cases tried during the present year have not been rightly determined, and that the doctrine of implied liability has been carried too far. Provisional committee-men begin to breathe again. As was to be expected and desired, considering the magnitude of the interests involved, and the diversity of opinion which appeared to exist on the bench and in the profession generally upon the subject, an unusual number of rules *nisi* have been granted in railway cases tried at the sittings after Term and on the several circuits. The discussion of those rules, and the decisions consequent thereupon, will, doubtless, tend to the ascertainment of correct principles, and diminish the incertitude which now exists as to the state of the law. We must again warn our readers, however, that railway law is only in its infancy, and that railway litigation has scarcely advanced beyond its first stage. As we have already hinted, the decision of any one of the courts, however ably constituted, cannot be considered conclusive upon questions of such a nature. Unless there be an entire concurrence in the judgments of the three courts, there may, and no doubt will, be an appeal to the Court of Error. That there should be such an identity of opinion amongst the judges as would render an appeal hopeless, is extremely improbable, inasmuch as the judges of different courts can hardly be called upon, unless when sitting in the Exchequer Chamber, to determine any question arising upon a precisely similar state of facts. In the class of cases to which we have adverted, the defendant may have simply assented to become a provisional committee-man, or he may have attended meetings, or taken shares, or signed the subscription deed; or it may turn out that there was or was not a managing committee at the time the defendant assented to the publication of his name. These circumstances, and a hundred others which might be readily suggested, in the actions by allottees as well as against provisional committee-men, will tend to vary and distinguish the cases that are about to be brought under the deliberate consideration of the courts, and may materially affect the judgment which

is pronounced in any particular case. However desirable it may be that the opinion of the Exchequer Chamber should be taken in respect of the decision which may be come to as regards any of the rules moved during the present term, the course of practice precludes the parties from appealing to that tribunal. Those who are dissatisfied with the judgments of the courts upon those rules, must therefore find some opportunity, by bill of exceptions or otherwise, of raising the question in a form which will admit of a decision by a Court of Error. Until this has been done, nothing can be said to have been absolutely determined.

When the law with respect to the claims of third persons on projected companies has been settled, it is not unreasonable to suppose that many questions will arise between those who stood in the relation of joint-promoters, committee-men, or directors of those undertakings. If one tithe of what was universally heard and generally believed as to the extent of the frauds practised by, and the amount of misplaced confidence bestowed on, the managers of some of these concerns, be founded in fact, the consequences of the railway mania of 1846 will furnish abundant occupation for the consideration of the courts for several years yet to come.

NOTES ON EQUITY.

VENDOR AND PURCHASER.—PUFFING.

In the recent case of *Woodward v. Miller*, decided by the Vice-Chancellor of England, and reported in the second volume of Mr. Collyer's Reports, p. 279, the court, under peculiar circumstances, enforced a sale, although a puffer had attended and bid to a certain extent thereat. The circumstances were in substance as follow:—

The plaintiffs, as executors, put up certain leasehold property for sale by public auction, in lots. By the conditions of sale the highest bidder was to be the purchaser, and no bidder was to offer less than 5*l.* at one bidding. The defendant attended the auction, and became the purchaser of lot 17, at the price of 690*l.* He paid a deposit, and signed a contract, which he afterwards refused to perform, on the ground, amongst others, that puffers were employed at the sale by the vendor. The puffer, being examined, stated that he was present at the sale; that just previously to the sale, the auctioneer stated to the persons assembled, that the sale was a *bond fide* one, and that, if there were any puffers in the room, he should hate himself, or expressions to that effect. The witness stated that he did not attend the sale with any view of being a purchaser, but

previously to its taking place, the auctioneer requested him to attend for the purpose of protecting the property from being sold under a certain price. The witness acted upon these instructions, and bid up to the sum of 650*l*. How many biddings there were before they reached the sum of 650*l*., the witness did not recollect.

The cases cited for the plaintiffs were *Bramley v. Alt*, 3 Ves. 620; *Conolly v. Parsons*, Id. 625, n.; *Smith v. Clarke*, 12 Ves. 477; *Twining v. Morrice*, 2 Bro. C. C. 326. Those for the defendant were:—*Bezzwell v. Christie*, Cowp. 395; *Howard v. Castle*, 6 T. R. 642; *Crowder v. Austin*, 11 B. Moore, 283, 3 Bing. 368; *Wheeler v. Collier*, Moo. & Malk. 123; *Meadows v. Tunner*, 5 Madd. 34.

The Vice-Chancellor said, he should abide by the course of decisions, without reference to any opinion of his own. The question was, whether the effect of the puffer's evidence was, that the bill ought to be dismissed. For that purpose he would consider the evidence as it would stand, without the statement which it contained of the verbal representation said to have been made by the auctioneer. It then stood thus:—The particulars and conditions of sale do not state the sale to be without reserve, nor give notice of a bidder being to be employed on behalf of the vendor. One of the conditions of sale was, that no person was to advance less than 5*l*. at each bidding; so that it was competent to each bidder to bid not more than 5*l*. It appears that the puffer, following his instructions, did bid to the amount of 650*l*., and the amount at which the purchaser bought was 690*l*., a difference of 40*l*.—eight fives,—rendering it probable that there were intervening biddings by substantial bidders. This was probable, not certain. When to this are added the circumstances, that there is no proof of undervalue of the property, and that there is neither proof nor allegation, that at the sale the defendant observed the puffer bidding, nor proof nor allegation that he was misled by any degree of confidence in the puffer:—the defendant electing not to try the question at law, the facts do not amount to a defence against specific performance in equity. In saying this, his Honour desired to be understood as proceeding on authority only and not on any opinion of his own; not that his own opinion differed from the authorities, but that they rendered it unnecessary for him to form an opinion.

Then the puffer represents the auctioneer to have said, before the commencement of the auction, "that the sale was a *bona fide* sale, and if there were any puffers in the room he should hate himself." The puffer was in the room at the time, and heard what the auctioneer said. In the defendant's view of the case, the puffer considered the statement as in fact amounting to a representation, that no person in his position or having his instructions were in the room, and yet, notwithstanding the statement, proceeded to do that which the auctioneer said was not to be done. That was a result which

rendered his Honour not very willing to believe that the puffer could have so considered it; it might be due to him to suppose that if he had so understood it, he would not have continued to be a party to what the auctioneer publicly denied to exist. The allegation in the answer was, that the auctioneer said that the sale was to be a sale "without reserve," which it was not proved that the auctioneer did say in fact. On the whole, if it would be right to decree a specific performance in the absence of that representation by the puffer of what the auctioneer said, it was not less right to decree a specific performance, in the circumstances of the case, by reason that such a statement was contained in the puffer's evidence.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

INCLOSURE OF COMMONS AMENDMENT ACT. 9 & 10 VICT. C. 70.

An Act to amend the Act to facilitate the Inclosure and Improvement of Commons. [26th August, 1846.]

1. 8 & 9 Vict. c. 118. — *Provisional orders of commissioners may be varied or amended—Copy of supplementary orders to be deposited for inspection.*—Whereas an act was passed in the 8 & 9 Vict., intituled "An Act to facilitate the Inclosure and Improvement of Commons and Lands held in Common, the Exchange of Lands, and the Division of intermixed Lands; to provide Remedies for defective or incomplete Executions, and for the Non-execution of the Powers of general and local Inclosure Acts; and to provide for the Revival of such Powers in certain cases;" and it is expedient that the said act should be amended as herein-after mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That where it shall appear to the commissioners that the terms and conditions of any provisional order heretofore issued or which shall hereafter be issued by the commissioners in the matter of an inclosure ought to be varied or amended, it shall be lawful for the commissioners at any time before they shall have certified in their annual General Report their opinion that the proposed inclosure would be expedient, or, in case the land proposed to be inclosed shall be land to the inclosure of which the previous authority of parliament shall not be necessary before they shall have caused notice to be given of their intention to proceed with such inclosure, whether the requisite consents shall or shall not have been taken to such provisional order, to make void and cancel the same, and to issue in lieu thereof such varied or amended provisional order as they shall think fit; and such deposit shall be made, and notice given, and other proceedings

had thereupon, as by the said act would have been required in respect of an original provisional order in the like matter; and in case any consents shall have been taken to a provisional order, and it shall not appear necessary to the commissioners wholly to cancel the same, then it shall be lawful for the commissioners, at any time before they shall have certified in their annual General Report their opinion that the proposed inclosure would be expedient, or in case the land proposed to be inclosed shall be land to the inclosure of which the previous authority of parliament shall not be necessary at any time before they shall have caused notice to be given of their intention to proceed with such inclosure, to vary or amend the terms and conditions of such provisional order, or any of them, by a supplemental provisional order: Provided always, that in every case in which a supplemental provisional order shall be made, the commissioners shall cause a copy thereof to be deposited for inspection in the same manner as by the said act required in reference to a provisional order, and shall cause notice to be given of such deposit, and shall by such notice specify the time within which dissents may be signified to such supplemental order; and unless persons the aggregate amount of whose interests in the land proposed to be inclosed shall exceed one third in value of the whole interest in such land shall, within the time so limited, signify in writing to the commissioners their dissent from such supplemental order, such order shall, for all the purposes of the inclosure, be deemed part of the provisional order.

2. *Supplemental order not to take effect unless consent of certain parties be obtained.*—Provided always, and be it enacted, That where under the said act the consent of the person interested in such land in right of a manor is required to an inclosure, or the dissent of any person or persons so interested might, in respect of his or their interest in right of a manor, have prevented an inclosure, such supplemental order shall not take effect in case such person or persons respectively shall, within the time so limited, signify in writing to the commissioners his or their dissent from such order; and where the freemen, burgesses, or inhabitant householders of any city, borough, or town, shall be entitled to rights of common or other interests in such land, no supplemental provisional order shall take effect without the like consents of the like number of such freemen, burgesses, and inhabitant householders as would have been required to the provisional order.

3. *If orders do not take effect, Commissioners may suspend proceedings.*—And be it enacted, That in case any supplemental provisional order so issued shall not take effect by reason of dissents having been signified as aforesaid, the commissioners may, at their discretion, proceed as if such supplemental provisional order had not been issued, or may suspend all proceedings in the inclosure.

4. *As to allotments for exercise and recrea-*

tion, &c.—And be it enacted, That where allotments for exercise and recreation, or for the labouring poor, or for any other public purpose, shall have been made the condition of any provisional or any supplemental provisional order, it shall be lawful for the commissioners, on the application in writing of the valuer, at any time before such valuer shall have made his award, under their seal, to allow an equal quantity of the land proposed to be inclosed to be allotted for either or both of the purposes aforesaid, or for any other public purpose, in lieu of that which may have been directed to have been allotted by the original or any supplemental provisional order.

5. *And allotments to lord of manor for right of soil, &c.*—And be it enacted, That it shall be lawful for the commissioners, by their provisional order in the matter of any inclosure, to make it a condition that there shall be awarded to the lord of the manor, instead of the whole or any part of the share or proportion of the residue of the land to which it shall be thereby declared he would have been otherwise entitled in respect of his right and interest as lord in the soil, and also, if they shall think fit, in lieu of any other allotment or allotments to which he may be found entitled in respect of any other rights or interests in the land proposed to be inclosed, such perpetual rent-charge or rent-charges of such aggregate amount as shall in the judgment of the valuer be equal to such share or proportion of the residue and such other allotment or allotments as aforesaid, as the case may be, and such rent-charge or rent-charges shall be awarded accordingly, and shall be recoverable by the same means as are by the act of the 7 W. 4, for the Commutation of Tithes in England and Wales, or any act amending the same, given for recovering rent-charges charged under the last-mentioned act; and the aggregate amount of rent-charge to which the lord shall be found entitled under this provision shall be charged by the valuer, as he shall deem convenient, as separate rent-charges or as one rent-charge, on the allotments or allotment to be allotted and awarded to any persons or person who shall consent thereto; and the valuer shall award to the person whose allotment shall be made liable to any such rent-charge, and as a portion of his allotment so charged, such addition in land as the valuer shall deem equivalent to such rent-charge; but in case such aggregate amount of rent-charge shall not be so charged, with consent as aforesaid, the valuer shall charge separate rent-charges making together the aggregate amount of rent-charge on all the allotments except the allotments for public purposes, in proportion to the value, in the judgment of the valuer, of the respective allotments.

6. *Award may be made by assistant commissioner, subject to approval of commissioners, in certain cases of intermixed copyhold, customary, or freehold lands.*—And be it enacted, That where any copyhold or customary land shall be intermixed or held or occupied together with land of freehold tenure, or with copyhold or

customary land held of another manor, or under other customs or titles, and such copyhold or customary land cannot be identified by the description thereof on the rolls of the manor, and the situation or boundaries of such freehold and copyhold or customary land respectively shall be unknown or unascertained, whether such lands shall or shall not be subject to be inclosed under the said recited act, and whether any proceedings for an inclosure shall or shall not be pending, it shall be lawful for the commissioners, upon the application in writing of the persons interested in such lands, and with the consent of the lord or lords of the manor or respective manors of which such copyhold or customary land shall be holden, by order under their seal, to appoint and authorize an assistant commissioner or any other person to award and declare what part of the lands so intermixed or held or occupied together shall be and be deemed copyhold or customary land and freehold land respectively, or shall respectively be held of each such manor or under each of such customs or titles respectively, or to determine and declare the situation and boundary thereof, as the case may require; and such assistant commissioner or other person shall frame a draft award, declaring which parts of such lands so intermixed or occupied should in his judgment be or be deemed copyhold or customary lands, for or in lieu of the copyhold or customary land or several copyhold or customary lands passed by the description or several descriptions in the court rolls, and for and in lieu of such freehold land respectively, with a map or plan annexed thereto; and the commissioners may, if they think fit, make such inquiries in relation to the matter of such draft award or any part thereof, and cause the same to be revised by such assistant commissioner or other person; and in case such draft award, without or after such revision as aforesaid, shall appear satisfactory to the commissioners, they shall cause the same to be engrossed, and to be signed by such assistant commissioner or other person, and shall approve the same under their seal; and from and after such approval the land described in such award shall be and be deemed of such tenures, and to be held of such manor and under such of the said respective customs or titles, as therein declared, and shall be subject to the same services, uses, trusts, and charges as the lands in respect of which they shall be awarded respectively; and a copy of such award shall be delivered to the lord of the manor or of each manor to which the same may relate, or his steward, and shall be kept with and deemed part of the court rolls.

7. *Application of provisions of recited act as to notices and dissents.*—And be it enacted, That the provisions of the said recited act concerning notices and dissents in the case of an order of exchange shall apply to and have the same effect respectively in the case of such award as aforesaid as if the approval of such award were the confirmation of an order of exchange.

8. *Boundaries of leaseholds may be declared in award setting out boundaries of copyhold or customary lands.*—*Proviso.*—And be it enacted, That where any land held by lease for years or for life or lives shall be intermixed with or held or occupied together with, or shall be alleged to be intermixed with or to be held or occupied together with, other land, and by reason of the description of the parcels in such lease being general and indefinite, or inapplicable to the actual condition of the property, or otherwise, the quantity, situation, or boundaries of such leasehold land cannot be ascertained, or differences or disputes shall have arisen concerning such quantity, situation, or boundaries, (whether such land shall or shall not be subject to be inclosed under the said recited act, and whether any proceedings for an inclosure shall or shall not be pending,) it shall be lawful for the commissioners, upon such application as herein-after mentioned, in and by any order under their seal, to authorize or to appoint and authorize any assistant commissioner or other person to award and declare what part of the lands so intermixed or held or occupied together, or alleged to be intermixed or held or occupied together, shall be and be deemed to be the land held under such lease, or to determine and declare the quantity, situation, and boundaries thereof, as the case may require; and any such authority, or appointment and authority, as last aforesaid, may be inserted in any order which shall also relate to copyhold or customary land, or may be made and given by separate order, as the case may require; and the assistant commissioner or other person so authorized shall insert a declaration in his draft award, or shall frame a draft award, as the case may require, in like manner as herein-before provided in the case of copyhold or customary land, being intermixed or held or occupied as aforesaid; and the provisions herein-before contained for inquiries in the matter of a draft award concerning copyhold or customary land, and the revision thereof, and the ingrossment, execution, and approval thereof, shall apply to a draft award and the declarations in a draft award concerning such leasehold land as aforesaid; and from and after the approval of the award concerning such leasehold land the land which shall be thereby declared to be or to be deemed leasehold land shall be and be deemed to be held under such lease, according to the intent of the declaration therein contained: Provided always, that every such order which shall authorize such assistant commissioner or other person to proceed as aforesaid in relation to any such leasehold land shall be made upon the application in writing of the person who if the lease had not been granted would have been the person interested in the land therein comprised, and also of the lessee or assignee of such lease, and of such sub-lessees and other persons as would have been persons (alone or jointly with any other person) interested in the land comprised in such lease, and upon the application also of the person interested in the land with

which such leasehold land shall be intermixed or held or occupied, or alleged to be intermixed or held or occupied.

9. *Copyhold and customary lands may be exchanged.*—Consent of lord of the manor required.—And be it enacted, That the provisions of the said recited act respecting the exchange of lands, and respecting the division into convenient parcels and allotment of lands intermixed or divided into parcels of inconvenient form or quantity, (and respectively applicable to land not subject to be inclosed under the said act, and to land so subject as to which no proceedings for an inclosure shall be pending,) shall extend and be applicable to lands of copyhold or customary tenure and the land taken in exchange under any order of exchange; and the land allotted under any order of division and allotment in respect of any copyhold or customary land shall be deemed copyhold or customary land, and shall be held of the lord of the same manor, under the same rent, custom, and services as the copyhold or customary land in respect of which it may be so taken and allotted respectively was or ought to have been held, without any new admittance in respect of land so taken and allotted; and the land taken in exchange and the land allotted under such orders respectively in respect of freehold land shall be of freehold tenure: Provided always, that no such order of exchange or of division and allotment of or affecting any copyhold or customary land shall be confirmed by the commissioners unless the consent of the lord of the manor of which such copyhold or customary land shall be holden shall have been given, either to the application of the persons interested for such exchange or division and allotment, or to the exchange or division and allotment to which such order shall relate; and a copy of every such order, when confirmed, shall be delivered to the lord of such manor or his steward, and shall be kept with and deemed part of the court rolls of such manor.

10. *Steward or deputy may consent in writing on behalf of the lord.*—And be it enacted, That in every case where the consent of the lord of a manor is required under this act: declaration or statement in writing under the hand of the steward or his deputy authorized to take surrenders or grant admittances of or to copyhold or customary lands in such manor, signifying that the lord has consented, shall be evidence of such consent for all the purposes of this act; and a recital or statement of the consent of the lord of a manor contained in an award which shall be approved or in an order which shall be confirmed by the commissioners shall, so far as respects the validity of such award or order, be conclusive evidence of such consent.

11. *Shares of land and cattle gates and stints may be exchanged.*—And be it enacted, That where a person interested in any undivided share, or any cattle gate or other gate, or any right of common defined by numbers or stints, in or to be exercised over any land,

and a person interested in any undivided share or gate or right (so defined) in or to be exercised over any other land, shall be desirous of exchanging their respective shares, gates, or rights, whether such respective lands or either of them shall or shall not be subject to be inclosed under the said recited act, and whether any proceedings for an inclosure of such respective lands or either of them shall or shall not be pending, it shall be lawful for the commissioners, upon the application in writing of the persons interested in such shares, gates, or rights which they shall be so desirous of exchanging, or in such lands in respect of such shares, gates, or rights, to make an order of exchange of such respective shares, gates, or rights, without requiring the concurrence in such application of the other persons interested in such lands; and all the provisions of the said recited act and this act respecting the exchange of lands shall extend and be applicable to the exchange of such respective shares, gates, or rights; provided that, instead of the map or plan by the said recited act directed to be annexed to an order of exchange, the commissioners may cause to be therein inserted or thereunto annexed such descriptions as may appear to them sufficiently to ascertain such respective shares, gates, or rights, and such respective lands as aforesaid.

12. *Accuracy of maps to be certified.*—And whereas by the said act provision is made for the adoption and use for the purposes of any inclosure under the said act of a copy of any map or plan which shall have been confirmed under the hands and seal of the tithe commissioners, or of any other map or plan of the accuracy of which the inclosure commissioners shall be satisfied, or for making a new survey, map, or plan; be it enacted, That every new survey, map, or plan which is used for the purposes of any inclosure under the said act shall be signed by the said inclosure commissioners, after examination of the accuracy thereof under their direction, and sealed with their official seal in testimony of such examination.

13. *An assistant commissioner may be appointed assessor.*—And whereas by the said recited act it is provided that the valuer may in the cases therein mentioned be assisted by an assistant commissioner specially appointed as an assessor, who shall be a practising barrister at law of five years standing at the least; be it enacted, That any assistant commissioner under the said act may be specially appointed as an assessor for the purpose aforesaid.

14. *Act deemed part of recited act.*—And be it enacted, That this act shall be taken to be a part of the said recited act, and be construed accordingly.

15. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this present session.

NOTICES OF NEW BOOKS.

The New County Courts Act, 8 & 9 Vict. c. 95, for Debts—Damages—Replevin, &c., with Notes, Critical and Explanatory; including Decisions in the Courts of England and Ireland, on Statutes having similar Enactments. By HENRY UDALL, of the Inner Temple, Esq., Barrister-at-Law. London: V. & R. Stevens, and G. S. Norton. 1846. Pp. 127.

SEVERAL editions of the Small Debts' Act, as might naturally be expected, have made their appearance, accompanied by observations, conjectures, and criticisms. Amongst these we shall for the present notice Mr. Udall's version.

The name and title of the new courts, and the act by which they are created, are thus in the outset observed upon:—

"This statute has hitherto been styled 'The Small Debts Act,' but the present editor has considered this a feeble designation for a statute that gives powers for establishing entirely new courts, under a new judicial system, throughout the country. He has, moreover, considered the term 'small' scarcely applicable to a jurisdiction that has power to determine, unless objected to by the parties, differences to an unlimited amount, as may be done under the present statute in the action of replevin. He has, therefore, designated the statute, that which its enactments show it was intended to be, viz., 'The New County Courts Act.'"

This point of nomenclature is, however, settled by Mr. Bethune, to whom the Lord Chancellor has entrusted the preliminary arrangements for carrying the act into effect. The communications from the clerks of the peace are to be endorsed "Small Debt Courts," not "New County Courts." Some of them, indeed, may extend over parts of several counties, whilst in other counties there will be several district courts.

Mr. Udall notices the corresponding "civil bill" system which has been established in Ireland, and remarks that,—

"It will be seen that reference is made in several of the notes to decisions in the Irish courts on the statutes enacting the civil bill jurisdiction in Ireland. The system now known by that designation was introduced first there in the time of Queen Anne, A.D. 1703, and permanently established in the 2nd of George I., and from thence, until the 36th of George III., was administered by the judges at the assizes. In that year most of their

powers over matters arising by civil bill were transferred to the present tribunal—the court of the assistant barrister. So important has this now become, that it is stated, in a learned work on its jurisdiction, that the principal portion of the common law business of Ireland is at the present time adjudicated in that court. The success of the system appears mainly owing to its having been made dependent on the superior courts; an *appeal* being given, as a matter of right, under certain terms to the judges on their several circuits. By this means the scandal arising from different interpretations of the law in adjoining counties has been very much avoided. And it is from reported judgments, so given on appeal on enactments similar to those introduced into the present statute, that the decisions alluded to have been selected."

On the 3rd section, by which it appears, according to the marginal extract, that the courts held under this act shall have the same jurisdiction as County Courts, and Courts of Record, our author observes, that—

"The intention, by the early part of the section, appears to have been to transfer to the new county courts held under this act so much of the jurisdiction as to debts and demands as is taken away from the old county court, or, in other words, that the new county courts held under this act are to have all the jurisdiction and powers of the old county court for the recovery of such debts and demands as are specified by this act. It is, however, contended that this is not the grammatical construction. The only alteration of the old county court by express terms is by section 4, by which all jurisdiction previously existing in the old county court is continued to it, except where the new county courts under this act have jurisdiction. The altered jurisdiction of the old court would be the remaining jurisdiction—and if so the grammatical construction of this section would be to transfer such remaining jurisdiction to the new courts. But as it never could have been the intention of the legislature to transfer to the new courts that which it has expressly retained to the old, the meaning seems to be that which is given in the early part of this note. It, however, may be contended, that, as the act does not affirmatively alter the jurisdiction of the old county court, *quod county court*, therefore no jurisdiction previously existing in the old county court is actually transferred. The effect of this would be that the new county courts have such jurisdiction only as is conferred by making them courts of record, and such other powers as are specially given in this act. So that the jurisdiction and power that is taken away from the old county court, *if indeed it be different*, is abolished altogether. It may be mentioned, although of course it cannot be considered in the construction, that the words in the bill as originally drawn were '*except so far as altered*'

by this act,' and that then sect. 4 was not in the act at all. In construing this act, it would be well to bear in mind that the old county court continued to have jurisdiction in certain judicial as well as other matters, but that the term *county court*, whenever it occurs, is defined by the interpretation clause to mean the county court established under this act, unless there be anything manifestly inconsistent with such a meaning."

And in the note to the 58th section, which professes to describe the jurisdiction of the court, he asks,—

"Is the *county court* here mentioned the county court under this act? See the interpretation clause. *All pleas of personal action*; that is, both *ex contractu* and *ex delicto*, and the most common of these are assumpsit, debt, trover, trespass, case, covenant, replevin, &c. The jurisdiction, therefore, extends to nearly every description of claim usually litigated in the superior courts. The proviso takes away many important classes of action. To most of these, such as libel, slander, &c., as the subject to be litigated would be apparent in the plaint, there will be no difficulty in preventing such actions being entertained. This, however, is not applicable to the whole proviso.

"Take the instance of a defence that involves title. Supposing an action to be brought for rent. It will be impossible to foresee in many cases whether the title will come into question or not. The defence may be that the plaintiff is not the person to whom the rent is due. This may involve the question at large whether a will is operative or not; but it may not have been known to the plaintiff that such a question would arise before he comes into court for the trial. And cases will continually occur where it will not be apparent *even at the commencement* of the trial. Take the case of trespass to land, in which there are two defences;—the action may have lasted hours before it is discovered that it depends on the question whether the plaintiff has a sufficient possession to enable him to maintain trespass. And what is to be done when, *during the trial*,

comes out that *title* is in question? Is the plaintiff to be non-suited? There is, moreover, this difficulty—who is to take the objection that title is in question? Supposing neither party does so, or that the parties even consent that the cause shall go on, the judgment cannot be legally enforced—*consent gives no jurisdiction*. If any authority were wanted for this, the several cases that have arisen upon the very point under the writ of trial clause of the Law Amendment Act would be applicable. It may be as well to refer to one, *Lawrence v. Wilcock*, 11 A. & E. 941, in which most of the cases will be found cited. It is to be regretted that no special directions are given for the course to be pursued when title comes in question for the first time during the trial of the cause. Perhaps it would also have been better to have enacted that *the judgment*

should be legal unless the objection to the jurisdiction were taken before verdict. This is the difficulty on one side; on the other, it will not do to allow a mere vague declaration of defendant that title is in question to oust the court of its jurisdiction and the plaintiff of his speedy judgment."

"Here again it would have been convenient to have provided *what* should be *deemed satisfactory proof* that title was in question. Supposing the court to go on after the title is in question and to give judgment; the court above, on this being satisfactorily made out, would, it is presumed, grant a writ of prohibition, and it is said that this could be done even after execution, *per Alderson, B.; Roberts v. Humby*, 3 M. & W. 123—127; otherwise, as that learned judge said, there would be no remedy where the judgment and execution issue when the superior courts are not sitting. Where the claim is under 5*l.*, and the court is proceeding without jurisdiction, it appears that the cause could only be stopped by prohibition, as unless the debt or damage claimed exceeds 5*l.*, the sect. 90 deprives the judges of the superior courts of the power to remove."

As to removal of causes generally, besides *certiorari* and prohibition, where they are applicable, there is the general remedy of trespass where the court has proceeded without jurisdiction, subject, however, to the risks incurred by the terms of section 139. It will be seen from what is said above, that there wants *some apt mode* of taking the objection to the jurisdiction. This arises from introducing a new system, by which formal pleading is abolished. In actions brought in the old county court there was no such difficulty, as there were several modes of making the objection to the proceeding for want of jurisdiction apparent to the court, the obvious one being by a plea in abatement. But besides this there were others where it appeared on the record itself; as in trespass, that it was trespass *contra pacem*, or *vi et armis*, or in replevin, that a party avowed or made conscience in the freehold of a third party; in all which the jurisdiction of the court was ousted, and any further proceeding in the cause either directly or collaterally was void, the remedy, when necessary, being by the well-known processes of removal into the superior courts to prevent execution below.

"If the term county court, in the early part of this section, means the old county court, it would seem that the *personal* actions mentioned in the proviso could be brought in the old county court by plaint, and be proceeded with before the suitors, as the proviso appears only to apply to courts under this act."

Mr. Udall, whilst freely animadverting on the doubts and imperfections of the act, entertains the notion that the new courts will be applicable for writs of trial, and that the tribunal to which these cases have been hitherto submitted, has been defec-

tive for want of *judicial strength*, and he makes some statement relating to the number of applications for new trials, which we believe to be very erroneous, and contradicted by the official returns to parliament. In the following remarks, however, we entirely concur:—

“I regret to say that there is among many people a growing indifference to the manner in which questions of small amount are disposed of. It should, however, be remembered that the price paid for the administration of justice is part of the general taxation of the kingdom, and as that is a burden to all, to the needy even more than to the wealthy, so ought questions that arise amongst needy suitors to be disposed of in such a way that the intelligent may appeal to the mode of settlement with satisfaction. And even if there were no taxation for the charge of judicial administration, yet as society has deprived every one of his natural right to redress his own grievances, government is little better than an usurpation so long as an inefficient system of redress continues the only substitute. It may be objected that this is a truism: it is so—but it is not the less necessary to enforce it at the present day, nor will it be futile to do so until all matters litigated, however small in value, can be tried by a tribunal competent to perform that duty. An opportunity is now presented to establish throughout the land creditable tribunals adapted to such a purpose—tribunals that, if this act fail to accomplish what its authors predicted of it, may be yet found useful auxiliaries for other judicial purposes, —useful in disposing of, in a satisfactory manner, much of the business that now presses with unusual severity upon those who have to perform the duties of judges in the superior courts.”

We quite agree with Mr. Udall in his opinions on the objectionable system of *Fee-taking* revived by this act

ARRANGEMENT OF BUSINESS.

Queen's Bench.

LORD DENMAN, C. J., observed, that at the Sittings in Banc after last term, the Court intimated that in this term, the *Special Paper* would be postponed till the Sittings in Banc after term. The Court would accordingly take the New Trial Paper on *Tuesdays* and *Fridays* during the term, instead of the *Special Paper*. The Crown Paper would not be postponed, but taken as usual, on *Wednesdays* and *Saturdays*.

Exchequer Chamber.

The Judges have appointed Thursday, November 26, to take cases in Error from the Court of Common Pleas; Friday and Saturday, November 27 and 28, to take cases from the Court of Exchequer; November 30, and following days, the cases from the Court of Queen's Bench.

Central Criminal Court.

November 23, and December 14.

QUESTIONS AT THE EXAMINATION.

Michaelmas Term, 1846.

I. PRELIMINARY.

Where, and with whom, did you serve your clerkship?

State the particular branch or branches of the law to which you have chiefly applied yourself during your clerkship.

Mention some of the principal law books which you have read, and studied.

Have you attended any and what law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

What are local and what are transitory actions?

When should notice be given before commencing an action?

What are the several periods of limitations of actions?

In what cases is a master answerable for damages done by his servant; and when is the servant only liable?

What is the law as to the payment of the debts of relations and third persons?

For what losses is a common carrier liable?

By what means would you prevent the operation of the Statute of Limitations on a simple contract debt?

How long does a writ of summons remain in force? How must it be served?

When is a writ of distringas issued? How can it be obtained?

What evidence can be adduced in an action on a bill of exchange against an indorsee?

What is the difference in effect of the plaintiff's being nonsuited, and of a verdict for the defendant?

What are the different writs of execution, and when may they be issued?

Is there any, and what recent alteration in the plaintiff's power of taking a defendant in execution, and what remedy has the plaintiff when he cannot take the defendant in execution?

Is there any, and what property, which cannot be taken in execution?

What is the rule as to attesting cognovits and warrants of attorney?

III. CONVEYANCING.

State the ordinary tenure of land and the common form of assurance before the Statute of Uses, and explain in a familiar manner the origin of copyhold estates, the services rendered in respect of them, and to whom, and the reasons for the general discontinuance and commutation of such services into money payments.

What are the words by which an estate of inheritance in land is created, and what is now the simple mode of conveyance for passing freehold and copyhold estates of inheritance upon a sale?

What is an estate in tail? Show concisely

by form of words how it, and entails special, and entails general, are created.

What are all the requisites for perfecting a will of real and personal estate?

State concisely the ordinary form of a conveyance of freeholds.

What is the meaning of "copyhold—fine arbitrary" as descriptive of the tenure of black acre, and what is the practical effect of that tenure?

How does a copyholder seised in a fee whose estate is fine arbitrary, and who wishes to give it by his will to trustees for sale, make his will so as legitimately to prevent the necessity of the admission of the trustees, and thereby avoid the fine that would be payable on such admission?

What is the effect of a jointure upon dower when the instrument creating the jointure does not contain the common stipulation that the jointure is to be in lieu of dower?

Give a sketch of the ordinary charges of a solicitor for a purchaser on the purchase of a freehold estate in respect of the conveyance from the time of purchase to the completion of it.

It being a common practice to frame conditions of sale so stringent as to compel a purchaser buying, subject to them, to accept an apparently, if not an absolutely, defective title; state your opinion whether trustees who invest of their own accord the monies of their cestuis que trust in the purchase of lands subject to such conditions, are personally liable in case of eviction, or whether the loss ought to fall upon the trust estate—and give your reasons.

What is the legal distinction between a mortgage in fee and a mortgage for a term of freehold lands; and by what means can the inheritance be now relieved from those incumbrances on satisfaction of the mortgage?

Is it legal to take procuration money on a loan of money by mortgage, and how much, and who is entitled to it; the solicitor for the mortgagee, or the solicitor for the mortgagor?

If judgment has been entered up against a man seised in fee of lands for a debt, how is such judgment to be enforced?

What is a lease in its general acceptation? Show the outlines of an ordinary farming lease for seven years.

Show the outline of an ordinary lease for twenty-one years of a private dwelling house in London.

IV. EQUITY, AND THE PRACTICE OF EQUITY COURTS.

The learned Selden has said, "For law we have a measure, and know what to trust to: equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity." Is this an accurate description of equity as administered in our courts? State the grounds of your opinion.

Define equity; state generally in what rela-

tion it stands to law in our system of jurisprudence; and mention some of the principal heads of equitable jurisdiction.

Are there any cases in which a remedy is afforded both in law and in equity? if so, enumerate some of them. State any instance in which, on account of the more efficient nature of the equitable remedy, the common law proceeding has fallen into disuse.

What relief does equity give to a legatee, or the creditor of a testator, when the executor withholds payment of the legacy or debt; and what takes place if the executor do not admit assets?

If in a will or settlement the usual power to appoint new trustees has been omitted, will a court of equity remedy the inconvenience; and if so, in what way?

A. agrees to sell an estate to B., and fails to perform his contract; what relief does equity give against the vendor? Has B. any, and what remedy at law, and may he take advantage of both?

What measures are adopted by courts of equity to prevent the infringement of a patent, and will delay in applying for relief operate to prejudice the application?

If an estate be devised by will away from the heir at law, and the devisee is desirous to secure the testimony of the witnesses to the will, what proceedings in equity can the devisee take to accomplish his object? Has any recent statute upon this subject been passed? if so, state its general scope.

After the service of a subpoena to answer a bill, within what time must the defendant appear; and on his default, what liabilities does he incur?

State within what time, after appearance, a defendant must answer an original or supplemental bill; and in what time, having already answered, he must answer an amended bill. In either case, point out the consequences which may follow his default.

After the defendant has filed his answer, when will it be deemed sufficient and unexceptionable? What course must the plaintiff take if the answer be insufficient, and within what time?

If a defendant, on his failing to appear or answer, should be proved to the court to be under age, or of unsound mind (not so found by inquisition,) what will the court do in such circumstances, and upon whose application?

What is a traversing note; when may it be filed; can a defendant, after such note has been filed, put in an answer, as of course; or if desirous to answer, what steps must he take?

If a defendant allege in his answer that the plaintiff is prosecuting him in equity, and also at law, for the same matter, can he compel the plaintiff to elect in what court he will proceed, and how?

When is a plaintiff entitled, as of course, to the common injunction to stay proceedings at law? may he amend his bill without prejudice to the injunction?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

How, and on whose application, can a fiat in bankruptcy be obtained?

Can persons associated for the formation of a railway, which cannot be carried into execution without the authority of parliament, and not having obtained any act, become bankrupt, and how?

Can a person holding a bill of exchange, accepted by a trader, or having sold goods to him on credit, petition for a fiat against such trader before the bill falls due, or the term of credit for the goods expires?

Can a fiat be opened in any, and what case, by any, and what person, other than the petitioning creditor?

Can the validity of a fiat, or of the adjudication thereunder, be disputed, and by whom, and how?

If a fiat issue against one of two partners, what, if any, are the rights of the joint creditors against the separate estate of the bankrupt partner as to proof of debts, choice of assignees, receipt of dividends, and opposing the bankrupt's certificate; and is there any, and what exception in any, and which of the cases stated?

If a fiat issue against two partners, and a creditor hold a joint security from both partners, and also a separate security from one of them, can he prove his whole debt against the joint estate on any, and what terms?

Are any, and what proceedings necessary to enable a legal or equitable mortgagee, without a power of sale, to realize his security and prove for the deficiency?

If a bankrupt have contracted a debt payable on a contingency which shall not have happened at the issuing of the fiat, can the creditor prove, and how?

Have the commissioners of the Court of Bankruptcy any and what power over the wife of the bankrupt?

If a bankrupt have government stock or stock in any public company standing in his name in his own right, can the assignees obtain possession of it, and how?

If a trustee become bankrupt, can the cestui que trust get the trust estate conveyed to new trustees, and how?

When can a bankrupt obtain his certificate, and how, and by whom, and on what grounds, can the granting of it be opposed?

If a person become bankrupt, be discharged under the Insolvent Debtors' Act, or compound with his creditors, and afterwards become bankrupt a second time, and obtain his certificate, what is the effect of such second certificate?

Have the commissioners of the Court of Bankruptcy jurisdiction in any cases where there is no fiat? and if so, state some.

VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

What is the difference between crimes and misdemeanors?

How may crimes and misdemeanors be prevented? State some cases, and the mode of proceeding to obtain the prevention.

In cases of misdemeanor what are the modes of prosecution usually adopted?

What is the jurisdiction in criminal matters exercised by the Court of Queen's Bench exclusive of the other superior courts of common law? Is there any, and what exception of persons and crimes with regard to such jurisdiction?

What is felony in the general acceptance of the English law?

What are the consequences of attainder?

In what cases, and under what authorities are heirs protected from prejudice by attainders of their ancestors? and persons beneficially entitled to real and personal property from the consequences of the conviction for treason or felony of a trustee?

Mention the statute commonly called the Habeas Corpus Act. Is the writ of habeas corpus demandable otherwise than by statute? What is this writ? State the different kinds and different purposes for which it is used.

By whom may the writ of habeas corpus be granted? and state the mode of proceeding to obtain it, and the proceedings under it.

State the nature and jurisdiction of the court of quarter sessions, its duties, modes of proceeding in it, and of appeal from its decisions.

What is the court of petty sessions? State its nature and jurisdiction, and modes of proceeding in it.

By whom is the appointment of clerk to the magistrates in petty sessions made? Is he removable from his office, and by whom? How is he remunerated, and by whom paid?

State the mode of proceeding to bring an offender before a single magistrate, and the subsequent proceedings. Can the magistrate appoint his own clerk, not being the clerk to the petty sessions? How is the clerk remunerated, and by whom paid?

State the summary jurisdiction for the punishment of wilful or malicious damage to real or personal property, public or private; and whether there is any, and what exception as to the jurisdiction; and state the case in which an offender may be apprehended without warrant, and by whom.

How would you proceed to recover possession of a tenement under the annual value of 20*l*.? State the authority and particulars of the proceedings, and any very recent enactment on this point.

SELECTIONS FROM CORRESPONDENCE.

LIENS ON DEEDS.

MR. EDITOR,—Allow me to call your attention to the case of *Steadman v. Hockley*, "reported in your number for 17th October." If such a decision as this is to stand good, where will be the hard-working attorneys or certificated conveyancers' security for costs? I

think the argument is grounded on a fallacious principle, and particularly so if we suppose the judge to have been guided by the case of "*Bleddon v. Fancock*," where Chief Justice Tindal has clearly laid it down, that "Everybody knows that by common law a man may detain the commodity upon which he has bestowed labour and money." Now, if the defendant (Hockley) had not had the deeds put into his possession for the purpose of *perusing*, and thereby bestowing mental labour, for what purpose were they so put into his possession? Surely the comparison of *trade manual labour* with that of *mental labour*, will not hold good; and if this decision stands good, no one can maintain a lien on any deed, matter, or thing, without previously exercising thereon some manual labour. The comparison of the diamond is bad. Take the case of a gold chain which is taken to the jeweller to be lengthened, which is a clear case of *manual labour and money expended*. Then, supposing the deeds in question are put into the conveyancer's hands for the purpose of drawing a conveyance from A. to Steadman; if there be no abstract of title with the deeds, will it not be necessary to peruse the deeds? And in doing so is not the conveyancer obliged to exercise considerable *mental labour*? And even if there be no abstract, I should be more satisfied with a perusal of the deeds themselves, as going to the fountain head; and all this must be done previously to drawing the conveyance to Steadman; then who can deny this to be work and labour bestowed upon deeds upon which he had a lien, and which deed (to carry out the comparison of the jeweller) is an additional link to the chain of the title.

LEX, JUN.

TITLE.—ADVERSE POSSESSION.

A. disseised B. of lands; and A. died before his title was complete by adverse possession, bequeathing by his will the property to C.; and leaving D., his only son and heir-at-law, him surviving. B. has neglected to bring his action for the recovery of the property within the time limited by the statute. Is the bequest to C. valid; being made before A. had a good title by adverse possession?

TACITUM.

APPORTIONMENT OF RENT ACT.

SIR,—The Act for the Apportionment of Rents, 4 & 5 W. 4, c. 22, especially section 2, was intended, no doubt, to be of extensive application; but the decisions of the courts have already narrowed its application very considerably. The following is a case of every day occurrence, and if you or any of your correspondents would give your readers the benefit of their experience upon it, I think the time so spent would not be thrown away.

A. seised in fee of divers estates, some let by *parol* and some on *lease*, to various tenants, dies, and by will devises the said estates to

divers persons. Query, would his executors in such case have any claim upon the devisees for a proportionate part of the rents.

W. M.

PRIVATE ACTS,

9 & 10 VICT.

PRINTED BY THE QUEEN'S PRINTER.

And whereof the Printed Copies may be given in Evidence.

1. An Act for vesting the Real Estates of the Right Honourable Charles John late Earl of Blesinton deceased, in the County and County of the City of Dublin, the City of Kilkenny, and the County of Tyrone, in Trustees for Sale, for the Payment of his Debts; and for other Purposes.

2. An Act for selling such parts of the entailed Lands and Estates of Hempriggs lying in the County of Caithness, belonging to Sir George Dunbar Baronet, as may be necessary for the Payment of the Debts and Obligations affecting or that may be made to affect the said Lands and Estates.

3. An Act to enlarge the Powers of leasing the Estates comprised in an Act passed in the Eighth and Ninth Years of the Reign of Her present Majesty Queen Victoria, intituled "An Act to authorize the Sale of Settled Estates of the Most Honourable the Marquis of Donegall in Ireland, in order to pay off Mortgage and other Incumbrances; and for other Purposes,

4. An Act for vesting certain undivided shares in Estates devised by the Will of Joseph Solly, Esquire, deceased, in Trustees for Sale; and for other purposes.

5. An Act for inclosing, dividing, and allotting certain Lands within the Manor or Lordship of Gollon, situate in the several Parishes of Llanbadarn-Vynydd, Llanano, Llanbister, Llandewy-Ystradenny, Abbey Cwmhir, and Saint Harmon, in the County of Radnor.

6. An Act for empowering the tenants for Life under the Wills of Miss Mary Cary and Adam Askew, Esquire, deceased, and Trustees during Minorities, to grant Building Leases; and for other Purposes.

7. An Act for the Division of the Rectory of Upwell-cum-Welney in the County of Norfolk and in the Isle of Ely in the County of Cambridge.

8. An Act for dividing, allotting, laying in Severalty, inclosing, and draining the Open and Common Fields, Common Meadows, and other Commonable Lands and Waste Grounds in the Hamlet or Township of Frilford in the Parish of Marcham in the County of Berks.

9. An Act for vesting in Trustees certain Hereditaments in the County of Kent devised by the Will of Henry Dudderidge Gentleman, to enable them to carry into execution an agreement between his Devisees in Trust and Alexander James Beresford Hope, Esquire, for the Sale thereof, and for subjecting the Bank Annuities, the Produce of the Purchase Money, to the same Trusts.

10. An Act for vesting in Trustees certain Hereditaments in the County of Kent the Estate of Emma Bedford Videan, a Lunatic, to enable them to carry into execution a Treaty between her Husband, Mr. Joseph Videan, and Alexander James Beresford Hope, Esquire, for the Sale thereof; also for laying out the Purchase Money in the Purchase of Bank Annuities, to be held as Real Estate in Trust for the said Emma Bedford Videan and her Heirs.
11. An Act for effecting an Exchange of Lands between the Archbishop of York, the Earl of Carlisle, and Viscount Morpeth.
12. An Act to enable Andrew Wauchope Esquire, of Niddrie Marischall, to uplift certain Sums of Money lying in Bank, and to be consigned therein, and to borrow upon the Security of his entailed Estates such further Sums as may be necessary for Repayment to him of a Portion of the monies laid out and to be laid out in the Improvement of the said Estates.
13. An Act to vest in Trustees in Fee Simple the entailed Lands of Haltrec and others, for the Purpose of selling the same, and applying the Price in Payment of Debts which affect or may be made to affect the same; and for other Purposes connected therewith.
14. An Act to enable the Trustees of the settled Estate of William Cullen to sell to Alexander James Beresford Hope, Esquire, before the appointed Time under the Settlement, a Portion of that Estate for which an Offer has been made them by him.
15. An Act for authorizing Leases to be granted for Mining and other Purposes of Estates in the County of Glamorgan belonging to Walter De Winton, Esquire (an Infant), Tenant in Tail under the Will of Walter Wilkins, Esquire, deceased; and for other Purposes.
16. An Act to enable the Trustees or other Guardians appointed by Joseph Thompson of Nortonhall of Eildon, deceased, to sell the said Lands of Nortonhall of Eildon, and also the Half of a Storey of a House in Saint Mary's Wynd, Edinburgh, and relative Policy of Insurance, vested in them in trust, and apply the Price to be obtained, and certain Trust Monies in their Hands, in the Purchase of other Lands, for the Purposes of the said Trust.
17. An Act to alter and amend an Act passed in the Third and Fourth Years of the Reign of Her present Majesty, intituled "An Act to enable the Trustees of the Marriage Articles of Thomas Bacon, Esquire, to grant a new Lease to Richard Hill and Anthony Hill Esquires, of an Iron Furnace, and Works and Mines, and Privileges and Hereditaments held therewith, called Plymouth Works, in the Parish of Merthyr Tydvill in the County of Glamorgan; and for better carrying the same Act into effect.
18. An Act for carrying into effect an Agreement respecting the Estates of the Corporation of the Borough of Ludlow, and other Estates vested in the said Corporation, in trust, either partly or in whole, for certain charitable Uses; and for appropriating certain Estates to the Charity herein-after mentioned, and declaring the Trusts thereof; and for making Provision for Payment of the Debts of the said Corporation; and other Purposes.
19. An Act to authorize the Sale of Part of the Charity Estates vested in the Master, Wardens, and Brethren and Sisters of the Guild or Fraternity of the Blessed Mary the Virgin of the Mystery of Drapers of the City of London, upon the Trusts of the Will of Thomas Howell, deceased.
20. An Act to enable William Ramsay Ramsay of Barnton, Heir of Entail in possession of Barnton and other Estates in the County of Edinburgh, to borrow Money upon the Security of the said Estates, for the Repayment of Monies laid out in the Improvement of the said Estate, and to enable him and his Successors to grant Feus of certain Parts thereof; and for other Purposes therein expressed.
21. An Act for vesting Estates in the Parish of West Bromwich in the County of Stafford, devised by the Will of Joseph Barrs, deceased, and the Mines and Minerals under the same, in Trustees for Sale, with Powers to grant Leases of such Estates, and to grant, demise, or sell the Coal, Ironstone, and other Minerals in or under the same.
22. An Act for burdening or selling a Portion of the entailed Estate of Cumbernauld in the County of Dumbarton, for Payment of Debt.
23. An Act to enable the Trustees of the Will of Edmund Yates, Esquire, deceased, to Sell the Estates in the County of Kent devised by the same Will, and to invest the Monies to arise from such Sale in the Public Funds.
24. An Act to incorporate the Governors and Managers appointed under the Trust disposition and Settlement of Robert Philp of Edenshead, deceased, and to explain and extend the Powers and Provisions contained in the said deed.
25. An Act to enable John Eden Spalding, with the consent of a Trustee, to Lease the Mines and Minerals within the Lands of Holm and other Lands and Estates in the Stewartry of Kircudbright in Scotland.
26. An Act to enable the Trustees acting under the Will of the late Sir John Webb, Baronet, deceased, to concur with other Parties, under the Sanction of the High Court of Chancery, in the Sale and Conveyance of certain Estates in the County of Dorset and in the Town and County of the Town of Poole devised by the said Testator, and of Estates subsequently acquired by the Trustees of his Will, and subject to the Trusts of the said Will.
27. An Act to vest in trustees in Fee Simple the entailed Estate of Overshiels in the County of Edinburgh, for the Purpose of selling the same, and purchasing other Lands to be entailed in lieu thereof.
28. An Act to enable the Trustees of certain Charity and Trust Estates at and near the Town of Lowestoft in the County of Suffolk to carry into effect a Contract for the Sale of Parts thereof to the Lowestoft Railway and Harbours

Company; and to enable the said Trustees, and the Trustees of other Charity and Trust Estates at and near the said town of Lowestoft, to grant Leases for long Terms of Years for Building Purposes of the said Estates or Parts thereof; and for other Purposes.

29. An Act to extend the Powers of Sale and Exchange and the Power to grant Building Leases respectively contained in the Will of Sir George William Tapps Gervis deceased; and to empower the Trustees of the said Will to raise Money by Mortgage for the Improvement of Part of the Estates devised by the said Will; and to confirm a Contract for an exchange entered into by the said Trustees with the Right Honourable James Howard Harris, Earl of Malnesbury.

30. An Act to give further Powers to the Trustees of the Will of the late Duke of Cleveland for the Management of the Trust Estates in the County of Durham by the said Will devised.

31. An Act to vest the Estates in Ireland settled by the Will of Bindon, Scott deceased, in Trustees, for the Purposes therein set forth.

32. An Act to unite and to incorporate the Trustees of certain Charities established by Humphrey Booth the elder, Esquire, and by Humphrey Booth, Esquire, his Grandson, respectively; and to amend an Act of Parliament made and passed in the Sixteenth Year of His late Majesty King George the Third, intituled "An Act to enable the Trustees of certain Charity Lands belonging to the Poor of Salford in the County Palatine of Lancaster to grant Building Leases thereof;" and to make further Provision for the Beneficial Management and Administration of the several Charity Estates and Charities of the said Humphrey Booth the elder and Humphrey Booth, his grandson, respectively.

33. An Act to enable the trustees appointed by Mrs. Jane Ferguson deceased to sell the Lands of Laverocklaw, and also certain Subjects situate in the Village of Ormiston, vested in them in trust, and to apply the Price to be obtained, and certain Trust Monies in their Hands, in the Purchase of other Lands, for the purposes of the said Trust.

34. An Act for enabling the President and Fellows of Sion College within the City of London to raise Money by way of Annuity on Part of their Estates.

35. An Act for facilitating the raising of the annual Sum of One Hundred Pounds settled upon the Vicar for the Time being of the Parish of All Hallows in the Town of Northampton, in lieu of Tithes, by an Act passed in the Twenty-ninth Year of the Reign of King Charles the Second.

36. An Act to enable the Trustees of the Will of the Most Noble William Harry, late Duke of Cleveland, to grant Leases and make Sale of the Bathwick and Wrington Estates in the County of Somerset.

37. An Act to enable the Most Noble Henry Charles, Duke of Norfolk, and other the Owner for the Time being of Arundel Castle and the

Estates settled therewith, to grant Leases of Parts thereof; and for other the Purposes therein mentioned.

38. An Act for authorizing the Sale of Part of the Estates settled by the Will of William Congreve, Esquire, deceased, and for laying out the Surplus of the Monies produced by such Sale, after Payment of his Debts, in the Purchase of other Estates.

39. An Act for the better Support and better Regulation of "The Hospital of the Holy Jesus, founded in the Manors in the Town and County of Newcastle-upon-Tyne at the Costs and charges of the Mayor and Burgesses of the Town of Newcastle-upon-Tyne in the County of the Town of Newcastle-upon-Tyne aforesaid," and for confirming Sales and other Dispositions made of Estates formerly Part of the Possessions of the said Hospital; and for other Purposes.

40. An Act to vest certain Lands and Hereditaments, the Estates of Alexander Perry Bond, Esquire, situate in the County of Westmeath in Ireland, in Trustees, to raise Money for the Payment of Incumbrances affecting said Lands and Hereditaments, and, subject thereto, to limit the said Lands and Hereditaments for the Uses and Purposes declared by the Will of William Bond Esquire, deceased.

41. An Act to enable Sir Richard Bulkeley Philipps Philipps, Baronet, and others, to grant Mining, Building, and other Leases of certain Estates in the County of Pembroke, subject to the Uses of the Will of Richard Baron Milford deceased.

42. An Act for enabling the Master and Brethren of the Hospital of Saint Mary the Virgin within the Borough of Newcastle-upon-Tyne to grant Building, Repairing, Mining, and other Leases of their Estates, and for extending the Objects of the Charity, and regulating the Appropriation of the Income thereof.

43. An Act to enable the College of Glasgow to effect an Exchange of the present Lands and Buildings belonging to and occupied by the said College for other sufficient and adequate Lands and Buildings more advantageously situated; and for other purposes relating thereto.

PRIVATE ACTS,

NOT PRINTED.

44. An Act to repeal so much of an Act passed in the Fourth Year of the Reign of His late Majesty King George the Fourth, intituled "An Act for naturalizing Henry Robert Ferguson," as enacts that the said Henry Robert Ferguson should not thereby be enabled to be of the Privy Council, or a Member of either House of Parliament, or to take any Office or Place of Trust, either civil or military, or to have any Grant of Lands, Tenements, or Hereditaments from the Crown, to himself, or any other Person or Persons in trust for him.

45. An Act to dissolve the Marriage of Jasper Byng Creagh, Esquire, with Emma Susan Weldale Creagh his present Wife, and

to enable him to marry again; and for other Purposes therein mentioned.

46. An Act to dissolve the Marriage of George Savage Curtis, Esquire, with Emma Curtis his now Wife; and for other purposes.

47. An Act to dissolve the Marriage of Edward Clark with his now wife, and to enable him to marry again; and for other purposes.

48. An Act to dissolve the Marriage of Edward Matthyssens with Joanna Frances, his now wife, and to enable him to marry again; and for other purposes.

49. An Act for naturalizing the Reverend Samuel Gobat, Clerk, Bishop of the United Church of England and Ireland in Jerusalem.

50. An Act to dissolve the Marriage of Robert Nesham Farquharson, Esquire, with Mary Ann, his now wife, and to enable him to marry again; and for other purposes.

51. An Act to dissolve the Marriage of the Reverend Salusbury Humphreys, Clerk, with Harriet Ruthan Humphreys, his now wife, and to enable him to marry again; and for other Purposes.

ATTORNEYS TO BE ADMITTED,

In and on the last Day of Michaelmas Term, 1846, pursuant to Judges' Orders.

Queen's Bench.

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Ingram, Frederick, 15, Ely Place; Dorchester	Francis Ingram, Dorchester.
Lambert, Alfred, 13, Upper Stamford Street	John Iliffe, Bedford Row.
Long, Walter Searley, 31, Nicholas Lane	Samuel Long, Portsea; Nicholas Gedye, George Street, Mansion House.
Sewell, Henry, 2, Stone Buildings, Lincoln's Inn; Aldermanbury	John Whitelock, Aldermanbury.
Simonds, Francis, 5, Warwick Court; Devizes	Alexander Meek, Devizes.
Stafford, William, jun., 15, Buckingham St., Strand	William Stafford, Buckingham Street.
Till, George John, Northend; Croydon	John Drummond, Croydon.
Whiting, William, jun., 35, Prior Street, Greenwich; Lambeth Terrace; Highgate Hill; Monmouth; Noel Street, Islington; Myddelton Square	William Harding Wright, Essex Street.
Winfred, William, 6, Elysium Row, Fulham	Charles Addis, Great Queen St., Westminster.

APPLICATIONS FOR RENEWAL OF CERTIFICATES,

On the last Day of Michaelmas Term, 1846.

Anderson, James, 14, Shawfield St., Chelsea.	Percival, George, Beckbury (Salop).
Belfour, Edmund, 39, Lincoln's Inn Fields.	Parrott, Joseph, Aylesbury.
Bailey, Edward, 5, Berners Street.	Powell, Horatio Nelson, Cheltenham.
Baker, John, jun., Urchinwood; Honfleur; Havre de Grace; Bath.	Parr, John Barton, Newcastle-upon-Tyne.
Boydell, George, Chester.	Prichard, Evan, Callenna, near Pontypridd.
Coombe, Alfred, Taunton; Wilton.	Robinson, Carew Sanders, Croydon; Everton.
Dudman, William, 14, Burton St., Hackney; Charles Street, Clarendon Square.	Redward, Charles Benjamin, Portsea.
Hiley, William, Christchurch.	Stanley, John, Brunswick St., Hackney Road; Westmoreland Place.
Jackson, Francis, Wisbech.	Scarman, Henry, 13, Wells St., Jewin St.; Victoria Place.
Lang, Herrmann, 32, Bedford Square.	Summers, William Henry, 10, Holland Place, Denmark Street, Camberwell.
Longstaff, James, Durham.	Tanner, William, Christchurch; Reading.
Montrou, Charles, 31, Redcross Square; St. Martin's Le Grand.	Williams, George Henry, 19, Margaret Street, Cavendish Square; Colchester.
Moore, James, Liverpool.	Wiles, George, Horbling.
Meredith, James Beavan, Clifford.	Westcott, Thos. Row, Ringmore (Devonshire).
Nicolson, Clement John, Kidderminster; Worcester.	Withey, Samuel, Devizes.
Pennington, James Mesterson, 12, Store St.; Gloucester Street.	Wray, George Octavius, Stokesley; Upper Stamford St.; Clement's Inn.

NOTICES OF APPLICATION TO JUDGE AT CHAMBERS FOR RENEWAL OF CERTIFICATES

In Vacation After Michaelmas Term, 1846.

Buck, Thomas Sanctuary, Warham.
 Burrell, Edward, 10, Stanhope Street, Park Place, Regent's Park; Hincley; Bedford Place, Hampstead Road.
 Cornock, Thos. Morris, Liverpool; Nantwich.
 Carrighan, Terentius, Henly Lodge, Pancras Vale, near Hampstead.
 Church, Thomas Charles, Montague Terrace, De Beauvoir Road, Kingsland.
 Davis, Henry Fox, Bath.
 Edwards, William, 10, Liverpool Street, Broad Street.
 Geare, William, 35, Norfolk St., and Arundel Street.
 Kirkpatrick, John, 1, Barnsbury Grove, Islington.
 Maskell, J., 18, Anglesea St., Bethnal Green; Durham St., Hackney Road.
 Morris, William Henry, 2, Belvedere Road, Lambeth.
 Neate, Henry, 27, Coleman Street.
 Owen, Frederick, Worksop; Titchbourne St., Edgeware Road.
 Peddell, John James, 2, Peel Terrace, Deptford.
 Rogers, Joseph, 2, Merioneth Terrace, Dublin; Beauvoir Square; Pakenham Street.
 Smith, William, 1, Lincoln's Inn Fields; North Street, Poplar.
 Taylor, Fitz Henry, 5, Lamb's Conduit Street.
 Wright, Charles Henry Price, 13, Pall Mall; New York, North America.

ADMISSION OF SOLICITORS.

NOTICE

*Secretary's Office, Rolls,
 4th Nov. 1846.*

THE Master of the Rolls has appointed *Wednesday, Nov. 18*, at the *Rolls Court, Chancery Lane*, at a quarter past three in the afternoon, for swearing in Solicitors.

Every person desirous of being sworn in on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before *Tuesday, Nov. 17*.

ANALYTICAL DIGEST OF CASES,
REPORTED IN ALL THE COURTS.

Law of Costs.

ARBITRATION.

AN action on the case for the disturbance of a watercourse was, after issue joined upon not guilty, and pleas denying the plaintiff's right, but before trial, referred by a judge's order to arbitration, the costs of the suit to abide the event of the award. The arbitrator found all the issues for the plaintiff, but assessed the damages under 40s. Upon taxation, the Master allowed the plaintiff full costs of the suit.

Held, (upon notice to review the taxation,) that inasmuch as the stat. 3 & 4 Vict. c. 24, was confined in terms to a recovery by the verdict of a jury, and as it did not appear by the order of reference that the parties contemplated bringing themselves within the provisions of that act, the plaintiff was entitled to full costs under the Statute of Gloucester, and consequently, that the taxation was correct. *Griffiths v. Thomas*, 32 L. O. 324.

BANKRUPT.

Solicitor's bill.—Service of petition.—1 & 3

W. 4, c. 56, ss. 46 & 55.—Two sums of 10*l.* and 20*l.* were paid by the official assignee, under the 46th and 55th sections. It did not appear that there were any further assets, nor had any creditor's assignee been appointed. The bankrupt's certificate had been granted. Upon the petition of the solicitor to the fiat, the court ordered his bill of costs to be paid out of the sums above mentioned, with 40*s.* costs of the petition. Of such applications it is unnecessary to serve notice upon the accountant in bankruptcy, under similar circumstances. *Ex parte Jerwood*, 32 L. O. 472.

CERTIORARI.

1. Several persons were indicted for a nuisance in erecting an embankment on the river Thames. The indictment was removed by *certiorari* by one of the defendants, and they were found guilty. The expenses of the prosecutors were paid out of a certain fund, on a promise on their part to repay the money so advanced. Some of the prosecutors had been injured in their business as watermen by reason of the embankment. A side-bar rule had been obtained for referring the matter to the Master to tax the costs of the prosecutors, under 5 & 6 W. & M. c. 11, s. 3.

1. *Held*, that the prosecutors were parties grieved, within the meaning of the 5 & 6 W. & M. c. 11, s. 3.

2. *Held*, that the prosecutors were entitled to costs under the 5 & 6 W. & M. c. 11, s. 3, although the expenses of the prosecution had been advanced by other parties under a promise to repay them.

3. *Held*, that the fact that the indictment had been removed by one of several defendants, is no ground for discharging a side-bar rule for referring the matter to the Master for taxation of costs. *The Queen v. Sir R. Dobson*, 31 L. O. 200.

2. *Party grieved.*—Where an indictment has been removed by *certiorari* and a conviction obtained, the person who, being a party grieved, retained and is liable to the attorney for the

prosecution, is entitled, under stat. 5 & 6 W. & M. c. 11, s. 3, to the costs of such prosecution, though other aggrieved parties, after the attorney was retained and the indictment removed, agreed to contribute part of the costs, and they are not joined in the application. *Reg. v. Williams*, 6 Q. B. 273.

DAY, COSTS OF.

Where issue is joined on error in fact, the defendant is entitled to costs of the day for not proceeding to trial, as in other cases. *Greville v. Sparding*, 3 D. & L. 336.

DEMURRER.

Where on argument of a demurrer the objections have not been noted in the judges' books, in pursuance of the 134th Rule of the Court, the party obtaining judgment on such objection will not be allowed his costs. *Cochrane v. Fitzpatrick*, 8 Irish Law Rep. 187.

EJECTMENT.

Witnesses to prove documents.—*Undefended cause.*—After nonsuit in ejectment, where the defendant did not appear, a judge at *Nisi Prius* cannot certify for the costs of a witness for lessor of plaintiff who attends to prove handwriting to a document, though the order of a judge at chambers made under Reg. Gen. Hil., 4 W. 4, Part 1, Rule 30, has ordered those costs to be paid "whatever the result of the cause." *Doe d. Meredith v. Sapsford*, 2 C. & K. 30.

EXCESSIVE COSTS.

Indorsement on Writ.—Where it appears that the defendant has properly paid a less sum for costs than that endorsed on the writ of summons, and in consequence of the plaintiff's having subsequently proceeded in the action, has incurred some additional costs, the court will not, upon motion, direct the payment of the latter. The proper course is for the defendant, upon payment of the whole sum endorsed, to obtain an order for taxation at the time. *Stephenson v. Finney*, 32 L. O. 158.

FEIGNED ISSUES.

Distinct counts.—In a declaration on a feigned issue, tried under stat. 6 & 7 W. 4, c. 71, s. 46, to review the decision of a tithe commissioner; there were three counts, in each of which the plaintiff denied, and the defendant asserted, the existence of a modus therein severally described; the three moduses being in respect of three independent titheable subjects. Verdict for plaintiff on one count, and for defendant on the two others.

The court allowed no general costs, but gave both parties the special costs of the issues on which they had respectively succeeded. *M'Carthy v. Nepeau*, 6 Q. B. 252.

INFANTS' CUSTODY ACT.

2 & 3 Vict. c. 54.—*Form of order.*—Whether the court has jurisdiction, under the Custody of Infants' Act, (2 & 3 Vict. c. 54,) to give costs, *quære?* *Ex parte Bartlett*, 32 L. O. 460.

INTERPLEADER.

If a plaintiff in an interpleader issue makes default in proceeding to trial, and application be made to compel him to pay the costs of the day and to go to trial, the costs of such application are costs of the cause, in like manner as upon applications for judgment as in case of a nonsuit. *Kimberley v. Hickman*, 32 L. O. 157.

JUDGMENT.

1. *As in case of nonsuit.*—A defendant entitled to judgment as in case of a nonsuit, will be allowed to enter up that judgment, but without costs, where it appeared that the plaintiff had refused to proceed in consequence of the embarrassed circumstances of the defendant, and of the fact of his having threatened to take the benefit of the Insolvent Act, in the event of the plaintiff succeeding in the action against him. *Crawford v. Crouther*, 8 Ir. Law Rep. 99.

2. *Creditors' petition.*—A judgment creditor, in applying for a revivor under the Judgment Acts, should state every material fact affecting his demand; if he withhold any he will not be allowed his costs. *Lune v. Townsend*, 8 Ir. Eq. Rep. 53.

3. The costs of redocketing a recent judgment not allowed in a petition matter. *Macken v. Newcomen*, 2 Jones & L. 16.

MANDAMUS.

1 W. 4, c. 21, s. 6.—As a general rule the costs of an application for a mandamus under the 1 W. 4, c. 21, s. 6, will follow the event, unless a strong ground of exemption can be shown.

Where the quarter sessions dismissed an appeal on an objection to the sufficiency of the notice of appeal, and an application was afterwards made for a mandamus to compel the justices to hear the appeal, and the overseers of the respondent parish appeared to show cause against the rule, the court granted the costs of such application, and of the mandamus against the party showing cause against it, it appearing to this court that the objection on which the sessions decided was frivolous. *The Queen v. Overseers of Oxted*, 32 L. O. 397.

MORTGAGE.

Interests.—In a suit to redeem, against a mortgagee in possession, the defendant, in his answer, set up an unfounded claim to the equity of redemption, and denied that the mortgagee had been satisfied, although a balance was due from him when he filed his answer.

The court ordered him to pay the costs occasioned by his claim, and the costs of the suit subsequent to the filing of his answer, and also interest on the balances in his hands since the time when the mortgage was satisfied. *Montgomery v. Calland*, 14 Sim. 79.

PARTIES.

1. *Breach of trust.*—*Bankrupt.*—Plaintiff decreed to pay, out of a fund recovered from

persons who had acquired it by a breach of trust, the extra costs occasioned by making a party a defendant instead of a co-plaintiff to a bill of revivor.

Plaintiff decreed to pay the costs of a certificated bankrupt who had been made a defendant to the suit. *Pannell v. Hurley*, 2 Coll. 241.

2. Where a bill was filed by the conuzee to recover the amount of a judgment to which the real and personal representatives of the conuzor were made parties: *Held*, that the defendants, co-heiresses of the conuzor, who, by their answer, did not claim any interest in the premises affected by the judgment, were not entitled, as against the plaintiff, to their costs of the suit, but only against the surplus fund arising from the sale of the premises decreed to be sold. *Rutherford v. Coltnam*, 8 Ir. Eq. Rep. 391.

PETITION.

Tithe rent-charge.—If the person liable to pay tithe rent-charge fail to do so within ten days after service of notice, as prescribed by 1 & 2 Vict. c. 109, the rent-charger is then entitled to prepare his petition, and is justified in refusing to receive the arrears without the costs incurred in preparing his petition and incidental thereto. *Macartney v. Graydon*, 8 Ir. Eq. Rep. 99.

RAILWAY ACT.

Upon the construction of a railway act, the court declined to make any order as to the costs of an application by vendors to have payment out of court of part of the purchase money, and investment of the remainder. *Molyneux, ex parte*, 2 Coll. 273.

RECEIVER.

1. *Costs of removal*.—Where an ignorant person has been induced by the misrepresentations of the plaintiffs to consent to act as receiver, and been accordingly appointed, but afterwards, on discovering the nature of the office, refuses to enter into the recognizance, the court will not make him pay the costs of his removal and the new order of reference. *Hunter v. Pring*, 8 Ir. Eq. Rep. 102.

2. *Sureties*.—A receiver, not having passed his account, was attached and subsequently discharged, and a new receiver appointed: *Held*, that the first receiver's sureties were liable under the recognizance to the costs of the attachment, and to all costs of discharging the defaulting receiver and appointing the new one. *Maunsell v. Egan*, 8 Ir. Eq. Rep. 372.

* Case cited in the judgment: *Kelly v. Murphy*, *Sau. & Scul.* 479.

REMANET.

Amended plea.—A cause in which four issues were joined was set down for trial at the assizes, but made a remanet. Before the next assizes, the defendant amended one of the pleas, which covered the whole cause of action, and upon which a verdict was afterwards found for the defendant and for the plaintiff on the other issues. *Held*, that the plaintiff was entitled to

the costs of the remanet. *Waller v. Blacklock*, 32 L. O. 615.

REQUESTS, COURTS OF.

Damages under 40s.—Judgment by default.—*Suggestion*.—A proviso, (in a Court of Requests' Act,) giving costs to the defendant, where the jury, upon the trial of the cause, find damages under 40s., does not apply to a judgment by default. *Waller v. Deane*, 7 M. & G. 936.

SECURITY FOR COSTS.

1. Objections to a surety for costs during the absence of plaintiff abroad, cannot be sustained after the return of the latter within the jurisdiction.

2. *Parties*.—The defendants are entitled to have security for bygone costs in a suit by married women in relation to their separate estates, in which their husbands were made co-plaintiffs, and leave was given after answer to amend, by striking the names of the latter out of the bill as plaintiffs, and making the assignee of one who had become bankrupt and the others defendants. *Greer v. Greer*, 8 Ir. Eq. Rep. 32.

Case cited: *Platel v. Craddock*, C. P. Cooper, 469.

3. A plaintiff out of the jurisdiction gave security for costs, and at the trial a verdict was given against him, to which he took a bill of exceptions. The court, on application after the bill of exceptions had been made up, made an order, on the application of the defendant, that the proceedings should be stayed until the plaintiff gave further security for costs, the defendant's attorney having sworn that the costs out of pocket already exceeded the original security. *Levison v. Hodges*, 8 Ir. Law Rep. 112.

4. The court required a plaintiff, who, it was alleged, was in insolvent circumstances, to give security for costs, where it appeared that he had assigned, amongst other property, the debt for which the action was brought to two creditors in trust for the rest. *Perkins v. Adcock*, 3 D. & L. 270.

5. A defendant having ascertained, when the time for pleading was about to expire, that the plaintiff was not resident within the jurisdiction, served a notice for security for costs, and on the following day, being the last day for pleading, filed his plea: *Held*, he had thereby waived his notice.

The proper course would be for the defendant to serve a cautionary notice on the plaintiff requiring him not to mark judgment for want of a plea pending the motion. *Watson v. Chadwick*, 8 Ir. Law Rep. 291.

SOLICITOR.

1. *Limited administration*.—*Lien*.—By settlement a sum of 2,500*l.* was charged, on an estate for lives renewable for ever, for the issue of the marriage, subject to appointment, part of which was appointed to one of the children on her marriage, and then settled; the residue

was never appointed. After the death of the first settlor, *A.*, the solicitor of *B.*, the other child of the marriage, acting under a power of attorney, obtained a renewal and instituted a suit in his name to raise his portion of the unappointed charge, but did not prosecute it. On the death of *B.*, *A.* obtained limited administration to him, and with the parties entitled to the daughter's share of the charge, filed a bill to raise the charge, when a receiver was appointed and funds got in. The lands being sold in a creditors' suit, and the settlement lodged in the office by order, without prejudice to *A.*'s lien: (1) *Held*, that *A.* had no lien for costs on the deeds, as *B.*, through whom he got them, had no *exclusive* right to them; and that there could not be any lien transferred to the funds. (2) *Held*, also, that *A.* was entitled out of the funds to the costs of procuring the renewal, and also to the costs of the limited administration out of the funds reported to *B.*'s representative; (3) but that he was not entitled out of the funds in the cause to his costs of the suits instituted by him in *B.*'s lifetime, and as his administrator after his death. *Molesworth v. Robbins*, 8 Ir. Eq. Rep. 1.

Cases cited in the judgment: (1) *Boson v. Boland*, 4 M. & Cr. 354; *Taylor v. Gorman*, 6 Ir. Eq. Rep. 330; (2) *Howlett v. Lambert*, 2 Ir. Eq. Rep. 254.

2. *Client*.—The court has no jurisdiction in directing the taxation of a solicitor's bill of costs, to order any account of dealings between the parties, in which the solicitor did not act as such, even though the latter has given credit for such items in the bill of costs. *Sneyd v. Conroy*, 8 Ir. Eq. Rep. 469.

SUPPLEMENTAL SUIT.

Parties.—A creditor instituted a suit against the real and personal representatives of the principal debtor, and against one of the sureties, omitting the other surety; and obtained a decree to account. He afterwards filed a supplemental bill against the representatives of the other surety: but inasmuch as they did not derive any benefit from the proceedings in the original suit, and as the creditor might have framed his original suit, so as to have had in it the relief sought by the supplemental bill: *Held*, that the plaintiff was not entitled, as against the representatives of the second surety, to the costs of the original suit. *Cuffe v. Young*, 2 Jones & L. 17.

TRESPASS.

In trespass, brought by the plaintiff against the defendant for driving his coach against one on which the plaintiff was riding, &c., *per quod* he was thrown to the ground and sustained serious injury; the jury having found for the plaintiff 6*d.* damages and costs, the judge having refused to certify that the trespass was voluntary and malicious: *Held*, that he was entitled to full costs of suit notwithstanding the provisions of the 2 G. 1, c. 11. *Chapman v. Speer*, 8 Ir. Law Rep. 278.

Cases cited in the judgment: *Milbourne v.*

Read, reported in *Batchelor v. Biggs*, 3 Wils. 325; *Crocket v. Montgomery*, Ver. & Ser. 473; *Barry v. White*, 2 Jones, 28.

TRIAL, FORMER.

Where an order *nisi* had been made, setting aside a verdict generally, and no mention made of the costs of the trial, the party succeeding on the second trial is entitled to the costs of the former. *Bush v. Purcell*, 8 Ir. Law Rep. 379.

TRUSTEE.

A trustee, who was required by the bill to answer certain interrogatories, answered them and disclaimed: *Held*, that he was only entitled to the costs of the disclaimer. *Murphy v. O'Shee*, 8 Ir. Eq. Rep. 329.

UNSUCCESSFUL CLAIM.

In a writ instituted on fair grounds to establish a claim to a residuary bequest, the court will give the plaintiff, though failing, his costs out of the estate. *Turner v. Frampton*, 2 Coll. 331.

Case cited in the judgment: *Lynn v. Beaver*, Turn. & Russ. 63.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Re Pender. Nov. 2, 3, & 4, 1846.

TAXATION OF COSTS.—CONSTRUCTION OF 6 & 7 VICT. c. 73.—JURISDICTION.—ORDER TO DELIVER UP PAPERS.

An order of course may be obtained for taxing a solicitor's bill of costs, under 6 & 7 Vict. c. 73, s. 37, if the same have been actually delivered, although it may not have been signed or enclosed in a letter signed by the solicitor.

The above statute does not affect the original jurisdiction of the court to order delivery of papers, &c., by a solicitor on payment of his taxed costs.

An order for a solicitor to deliver up all papers, &c., belonging to his client is restricted to such papers as relate to the business in respect of which the lien arose; and it will not be set aside as irregular, because it may literally include other papers, &c., belonging to the same client, upon which there may exist a lien for other business.

THIS was an appeal from the Master of the Rolls, whose judgment is reported at length, ante, L. O. 31, p. 11. It was fully argued before the late Chancellor, on the 4th of last November, when his lordship intimated a strong opinion on the construction of the section, but concurred with the Master of the Rolls in the interpretation of the order to de-

liver up the papers. No judgment having been pronounced by Lord Lyndhurst, the appeal now came on for rehearing before the present Chancellor. The facts, as they are stated in the above-mentioned report, are briefly these:—Miss Glasson having determined to change her solicitors, instructed Messrs. Willoughby and Jacquet to apply for any bills of costs that her former solicitors, Messrs. Pender & Co., might have against her, with the view to their being settled. Messrs. Willoughby & Co. accordingly obtained from the town agent of Messrs. Pender & Co. three several bills of costs amounting to 45*l.* 7*s.* 4*d.*; and besides these, Messrs. Pender & Co. had previously delivered to Miss Glasson four bills of costs amounting to 37*l.* 4*s.* 7*d.*, which they had against William Glasson, deceased, to whose estate she had administered, but on account of which they had received various sums amounting to 20*l.* 1*s.* 11*d.* Several communications took place between Messrs. Willoughby & Co. and the agents of Messrs. Pender & Co., with the view to an amicable arrangement of the bills without taxation, but the deductions required by Messrs. Willoughby & Co. not being agreed to, a common order under the statute 6 & 7 Vict. c. 73, s. 37, was obtained as of course, to tax the three bills delivered to them, and a special petition was presented for an order to tax the remaining four bills. A motion on behalf of Messrs. Pender & Co. to discharge the order of course was dismissed with costs, and the usual order as prayed for in the petition was made for the taxation of the four bills for business done for William Glasson. The order for taxation of the three bills directed the solicitor to deliver up *all* the papers belonging to the applicant.

Mr. James Parker and Mr. James for the appellants, contended, that an order could not be obtained for the taxation of a solicitor's bill which was not signed or enclosed in or accompanied by a letter signed by him. That an order of course, after the expiration of a month from the delivery of the bill, was irregular; and that the order for the taxation of the three bills which directed the delivery up of *all* the papers, &c., was also irregular, as the solicitor had a lien upon those connected with the business of the testator in respect of which the four bills had been delivered.

The material point, however, was on the verbal construction of the 6 & 7 Vict. c. 73. By the 37th section it is enacted, that no solicitor shall bring any suit for the recovery of any fees, charges, or disbursements, until the expiration of one month after he shall have delivered, sent by post, or left, "a bill of such fees, charges, and disbursements, and which bill shall either be subscribed with the proper hand of such solicitor, (&c.) or be inclosed in or accompanied by a letter subscribed in like manner, referring to *such bill*. And upon the application of the party chargeable by *such bill* within such month, it shall be lawful," &c., for the court to refer such bill to be taxed and settled by the proper officer. The Master of

the Rolls held, that the words "such bill" in both the above instances referred only to "a bill of such fees, charges, and disbursements." It was admitted that his lordship's conclusion was inevitable in regard to these words when first used in the above extract, but it was argued that upon their occurrence for the second time, their meaning would be extended to the whole of the antecedent part of the section, and that they referred not only to "a bill of such fees, charges, and disbursements," but also to the subsequent words "and which bill shall either be subscribed," &c. This reading would render it necessary that the bill of costs should be signed before the application for its taxation could be made by the party chargeable, and thus the practice in the courts of equity would become uniform with that of the courts at common law. They cited *Doe dem. Palmer v. Roe*, 4 Dowl. 95; *Gerrard v. Arnold*, 6 Dowl. 330; *Peters v. Sheehan*, 10 Mees. & W. 213; *Re Gaitskell*, 1 Phil. 576; *Vincent v. Slaymaker*, 12 East, 372; *Ex parte Partridge and others*, 2 Mer. 500; and Seton on Decrees.

Mr. Roupell and Mr. Goodeve submitted, on behalf of Miss Glasson, that the Master of the Rolls had correctly construed the words "such bill;" a construction which had been previously adopted in the case of *Downes*, 5 Beav. p. 425, and that it was the invariable practice at the Rolls Court to grant taxation orders, whether the bill was or was not signed. That when a petition prayed for delivery of papers by the solicitor, the court by its original jurisdiction could order the taxation of the bill, for the purpose of enabling the petitioner to ascertain the amount. *Ex parte Murray*, 1 Russ. 519; *Biggs v. Maxwell*, 3 Dowl. 497. That the order to deliver up the papers, &c., would be restricted to such as related to the business for the costs of which the taxation was directed.

The Lord Chancellor. The question is, whether, upon the true construction of the statute, an order for taxation could be granted for a solicitor's bill of costs unsigned or unaccompanied by a letter referring to it. The Master of the Rolls, in the case of *Downes*, had put the same construction on the section as in the present case. Where there is a doubt or ambiguity, a long course of practice would induce the court to interpret it conformably with former decisions. From the information of an officer of the Rolls, (Mr. Murray,) who was the best acquainted with this practice, it appeared that no distinction was ever made in orders for taxation respecting bills signed or unsigned or unaccompanied by letters. There would be no benefit to either party in a provision of the legislature that no bill could be taxable unless signed. The solicitor was required to sign the bill to prevent ambiguity in the items or amount demanded from his client, and also as evidence against the solicitor in the event of a dispute, who, it might be observed, was liable to the penalty of paying the expenses of the reference if one-sixth of the amount was struck off by the taxing officer. Great mal-

practices, as was adverted to in the judgment of the Master of the Rolls, would arise if the solicitor might deliver an unsigned bill, and, upon resistance of payment by the client, substitute a second bill signed. It was obvious that such an experiment might be tried by a solicitor choosing to take his chance of the client's temper. Notwithstanding the ingenious arguments at the bar on the ambiguity in the language of the statute, the Master of the Rolls appeared to have put a correct construction on it. These observations applied to the order of course for taxing the three bills. In respect of the four bills, the statute did not affect the jurisdiction which the court had to order the taxation of a solicitor's bill for the benefit of a client requiring the delivery of papers in the possession of the former. After the expiration of the month mentioned in the section in question, the court had a discretion to impose terms upon the person applying for an order of taxation. It had done so in the present instance. It was scarcely necessary to advert to the objection respecting the form of the order to deliver up all the papers in the solicitor's possession. It could not be misconstrued, as the order was for the taxation of the bills charged against Miss Glasson personally. If any dispute should arise as to which papers related to business done for her personally, and which to that in her capacity of administratrix, application might be made to the court. Under all the circumstances, the appeal must be dismissed with costs, and his lordship must confess that he was sorry that such objections had been made.

Mr. James Parker asked for the costs of the hearing before Lord Lyndhurst, which had come to nothing; but the Chancellor said, that this must be considered as in the case of a rehearing before himself, and the costs must follow in the same manner.

Vice-Chancellor of England.

Lewis v. Cooper. Michaelmas Term, Nov. 10, 1846.

PARTIES.—DEMURRER.

A demurrer for want of parties cannot be sustained, because the bill asks some relief, which could not be given in their absence, if there is relief asked which could be given on the record constituted as it is.

THIS was a demurrer for want of equity and want of parties. The bill was filed by a shareholder in a projected railway company, called the South and Midlands Junction Railway Company, against the directors, with the view of compelling them to refund a sum of 55,000*l.*, which it was alleged they had applied, contrary to the provisions of the deed constituting the company, in part payment of the expenses of the Manchester and Southampton, and Manchester and Poole Railway Company, with which they had entered into an agreement to amalgamate. The bill prayed, that the

55,000*l.* might be distributed among the shareholders of the South and Midlands Junction Company. It was contended that the bill was defective in praying that the sum in question might be thus distributed, without providing for the previous payment of any liabilities of the company which might remain unsatisfied; and also, that it did not, with sufficient precision, state that the acts of the directors exceeded the powers given them by the deed. The demurrer for want of parties rested upon the proposition that the court could not effect the main object of the bill, namely, the distribution of the fund to be recovered among the shareholders, without having them all before it.

Mr. Terrell, in the absence of Mr. Roll, for the demurrer, cited *Loscombe v. Russell*, 4 Sim. 8; *Walworth v. Holt*, 4 Myl. & C. 619; *Hichens v. Congreve*, 4 Russ. 556; *Wallburn v. Ingilby*, 1 M. & K. 61; *Taylor v. Salmon*, 4 M. & C. 134; and *Fairthorne v. Weston*, 3 Hare, 387.

Mr. Bethell was for the bill; but the

Vice-Chancellor, without calling upon him, expressed his opinion, that the demurrer must be overruled. For had the only object of the bill been to have the 55,000*l.* distributed amongst the shareholders, it would have been necessary that all should be before the court; here the bill also sought to have that fund secured, which must be for their benefit, whatever was done subsequently with it. This therefore was relief which could be granted upon the bill as at present framed, and it was not a sufficient objection that the bill went on to ask for more, which could not be granted.

Vice-Chancellor Wigram.

Wilkins v. Nainby. July 24.

SUBSTITUTED SERVICE.—21ST ORDER OF 1842.

Where a defendant had given "The Queen's Prison" as his address, but had left before the usual time of service of process, without giving any other address, the court refused to allow substituted service at the Queen's Prison.

Mr. Terrell moved for leave to substitute service by leaving a copy of the subpoena at the Queen's Prison, where the defendant had been imprisoned, and which he had given as his only address. The defendant had subsequently obtained his release, and his present residence could not be discovered, after diligent inquiry and search. He submitted, that under the 21st Order of 1842, the court would allow service at the Queen's Prison to be good service.

Sir James Wigram, V. C. I cannot bind the defendant by such service. The question is, whether I should think it right to make that the place of service, if this person had not given that place as his address, but had simply been there? You seek to serve him according to his own intimation, and this you say the

order empowers you to do. But I cannot make a prison a man's place of address for the purpose of service, merely because he has been in such a prison. I do not wish to give any opinion upon the construction of the order. I only say that I will not make a prison a man's place of residence for service, merely because he has been there.

Motion refused.

Queen's Bench.

(Before the Four Judges.)

Kemp v. Gibbons. Michaelmas Term, 1846.

COVENANT.—PLEADING.

In an action of covenant the defendant pleaded, under the statute 3 & 4 W. 4, c. 42, that the cause of action did not accrue within 20 years; replication, that the cause of action did accrue within 20 years. The plaintiff produced at the trial several letters from the defendant for the purpose of showing an acknowledgment of the debt within 20 years.

Held, that the question, whether such letters amounted to an acknowledgment of the debt sufficient to bring the case within the provisions of the statute, was not admissible under that form of replication.

THIS was an action of covenant. About the year 1815, the defendant executed a deed, in which he covenanted to repay a sum of money, with interest thereon, which had been advanced by the plaintiff to the defendant. The defendant pleaded, under the statute 3 & 4 W. 4, c. 42, that the cause of action did not accrue within 20 years. Replication, that the cause of action did accrue within 20 years. At the trial several letters written by the defendant to the plaintiff were read in evidence, for the purpose of proving an acknowledgment of the debt by the defendant within 20 years. The case was tried at the last summer assizes, before *Wilde, C. J.*, when the plaintiff was nonsuited, with leave reserved for the plaintiff to move to enter a verdict for the amount claimed, provided the court should be of opinion that the letters admitted the existence of the debt sufficient to take the case out of the statute 3 & 4 W. 4, c. 42, s. 3; and also, whether the form of the replication was such as to admit the objection being taken.

Talfourd, Serjeant, now moved to set aside the nonsuit and enter a verdict for the plaintiff. [*Lord Denman, C. J.* Assuming for the present that the letters constitute an acknowledgment sufficient to satisfy the terms of the statute, is the replication properly pleaded to admit the objection?] The proviso in the 5th section of the statute states, that "the plaintiff in any such action, on any indenture, specialty, or recognizance, may, by way of replication, state such acknowledgment, and that such action was brought within the time aforesaid, in answer to a plea of this statute." Now the replication is clearly sufficient to admit the

objection, unless the court should be of opinion that the word "may" in the statute should be read *must*.

Coleridge, J.^a I think that must be the proper meaning of the statute.

Wightman and Erle, J.'s, concurred.

Rule refused.

Queen's Bench Practice Court.

Allen v. Bussey. Nov. 4, 1846.

INDORSEMENT OF DEBT ON WRIT OF SUMMONS.

It is sufficient where interest is claimed upon a debt, to state the time from which it is so claimed, without specifying the rate.

O'Brien moved for a rule to set aside the writ of summons, and the copy and service in the action, on the ground of irregularity. The indorsement on the writ was as follow:—"The plaintiff's claim, 33*l.* 3*s.* 6*d.*, and interest thereon, from the 8th September, 1846, until payment for debt, and 2*l.* 10*s.* for costs, and if the amount thereof be paid to the plaintiffs or their attorneys within four days from the service hereof, further proceedings will be stayed." This indorsement, it was argued, was bad, inasmuch as the amount of interest claimed was indefinite, the rate being omitted, and that the case therefore fell within the ruling in *Chapman v. Becke*, 3 Dowl. & L. 350, for that it would be impossible from this indorsement to know how much money to tender, inasmuch as it might be that the plaintiff would claim interest at the rate of 4 per cent., or at a much greater rate.

Patteson, J. I take it, that when a person says I claim interest from such a day, that he means the regular legal interest at 5 per cent. It must be presumed, that in the absence of any statement to the contrary, that he intends the usual rate of 5 per cent. The defendant should tender that interest, he is not likely to be left in doubt by such an indorsement. I should not like to set aside an otherwise good writ upon such an objection.

Rule refused.

Doe dem Strickland v. Roe. Nov. 7, 1846.

MOTION FOR JUDGMENT AGAINST THE CASUAL EJECTOR.—SERVICE OF DECLARATION.

In an action of ejectment brought against two persons as executors, service of the declaration upon one of them is sufficient to entitle the lessor of the plaintiff to judgment.

Hugh Hill moved for judgment against the casual ejector. This was an action of ejectment brought by the lessor of the plaintiff against James Phineas Davis and Edward

^a Lord Denman, C. J., had left the court.

Isaac Sydney, who were the executors of the last will and testament of Phineas Davis, deceased, to recover possession of a house. It appeared by the affidavits on which the motion was made, that the defendants claimed to hold under a lease granted to the deceased Phineas Davis by the lessor of the plaintiff, and were jointly in possession of the premises, which were the subject of the cause; it also appeared that personal service of the declaration in ejectment had been made on Sydney on the 29th of October last, but that although diligent search had been made for the other executor, Davis, he could not be found; it was further sworn, that on the 31st of October a servant of the name of Jane Richardson (who had charge of the premises for both defendants) was served with a copy of the declaration, and directed to give it to the defendant Davis. Upon these facts, it was submitted that the service was sufficient, and it was contended that the defendants being joint executors, were in the nature of joint tenants of the property.

Pattison, J., thought the service upon one of the executors sufficient." Rule granted.

Common Pleas.

Pring, appellant, and Estcourt, respondent.
Michaelmas Term, Nov. 7, 1846.

REGISTRATION APPEAL. — ENTERING OF,
AFTER THE 4TH DAY OF THE TERM.

It is necessary that the indorsement required by the 42nd section of the 6 Vict. c. 18, should be signed by the revising barrister before the appeal from his decision can be properly entered. Where, however, it appeared that such signature could not be obtained in time to enter the appeal within the first four days of the term as required by the 62nd section, the court allowed a subsequent entry nunc pro tunc, the respondent being at liberty to object to such entry.

Arnold, for the appellant, applied for leave to enter the appeal in this case, *nunc pro tunc*. By the 42nd sect. of the 6 Vict. c. 18, the revising barrister is required to make out and sign a statement of his decision on the whole case, and to indorse thereon certain matters therein mentioned, and further to date and sign the said indorsement, for the purpose of being transmitted to the Court of Common Pleas, in the manner thereafter mentioned. Then by the 62nd section, every appellant is required, within the first four days of the term, to transmit to the Master the statement "so signed as aforesaid," for the purpose of having the appeal entered. Here, as appeared by the affidavit in support of the application, the statement had been presented at the Master's office within the time allowed, but the Master had refused to enter the appeal on the ground of the indorsement on the case not having been signed by the revising barrister; and it was further sworn, that in consequence of the barrister's absence from town, the appellant had since been unable to obtain the requisite signature. Under these circum-

stances, it is submitted the court ought to grant the application. The 42nd section, which requires the indorsement to be signed, is merely directory, and in that respect different from the 62nd section, enacting that the statement of the case shall be signed.

Maule, J. The words "so signed as aforesaid," in the 62nd section, comprehend every signature, and mean as before-mentioned in the 42nd section.

Arnold, J. Upon the same construction then it would be indispensably necessary in a consolidated appeal, as this is, under the 44th section, to state accurately the christian and surnames of all the parties, which would hardly, it is submitted, be the case.

By the court. The signature ought certainly to have been subscribed to the indorsement. But, under the circumstances, the appellant would be allowed to enter the appeal, having first obtained the signature, it being open to the respondent to contend that the appeal should not have been so entered.

Application granted.

Court of Review.

Re Lennard. Michaelmas Term, 1846.

ANNULLING FIAT.—BANKRUPT.—PARTY.

The court granted an order for annulling a fiat, where the second fiat had been issued, and the motion appeared to be made by the petitioning creditor under the subsequent fiat, with the concurrence of the petitioning creditor, subject to the application of the bankrupt, in whose absence the motion appeared to be made.

ON the 3rd of November a fiat was issued against the bankrupt. The fiat was advertised in the Gazette on the following day. Some doubt being felt as to the validity of the fiat, a subsequent one was issued, with the concurrence of the petitioning creditor. A motion was now made at the instance of the petitioning creditor under the second fiat, but with the consent of the petitioning creditor under the former, to annul the former fiat. The bankrupt did not appear to have had notice of the application.

Mr. W. M. James appeared in support of the motion.

The Chief Judge, (Sir J. L. Knight Bruce) It is not usual to apply to annul a fiat, unless in the presence of the bankrupt. By proceeding in his absence, the court may deprive him of some right or advantage, of which the court has no jurisdiction as against him. I will make the order, subject to any application that may be made by the bankrupt.

CIRCUITS OF THE INSOLVENT DEBTORS COMMISSIONERS.

Spring Circuits, 1847.

MIDLAND CIRCUIT.

Henry Revell Reynolds, Esq. Chief Commissioner.

Essex, at Chelmsford, Tuesday, March 9
Essex, at Colchester, Wednesday, March 10
Suffolk, at Ipswich, Thursday, March 11.

Norfolk, at Yarmouth, Saturday, March 13.
Norfolk, at the Castle of Norwich, Monday, March 15.

At the City and County of the City of Norwich, the same day.

Norfolk, at Lynn, Wednesday, March 17.
Suffolk, at Bury St. Edmunds, Thursday, March 18.
Cambridgeshire, at Cambridge, Friday, March 19.
Huntingdonshire, at Huntingdon, Mon., March 22.
Northamptonshire, at Peterborough, Tuesday, March 23.

Rutlandshire, at Oakham, Wednesday, March 24.
Lincolnshire, at Lincoln, Friday, March 26.

At the City and County of the City of Lincoln, the same day.

Nottinghamshire, at Nottingham, Monday, March 29
At the Town and County of the Town of Nottingham, the same day.

Derbyshire, at Derby, Wednesday, March 31
At the City and County of the City of Lichfield, Thursday, April 1.

Staffordshire, at Stafford, Saturday, April 3.
Shropshire, at Shrewsbury, Tuesday, April 6.
Warwickshire, at Birmingham, Thursday, April 8.
Warwickshire, at Warwick, Friday, April 9.
Warwickshire, at Coventry, Monday, April 12.
Leicestershire, at Leicester, Tuesday, April 13.
Bedfordshire, at Bedford, Thursday, April 15.
Northamptonshire, at Northampton, Friday, April 16.
Buckinghamshire, at Aylesbury, Monday, April 19.

SOUTHERN CIRCUIT.

John Greathead Harris, Esq., Commissioner.
Berkshire, at Reading, Friday, Feb. 19.
Oxfordshire, at Oxford, Monday, Feb. 22.
At the City and County of the City of Oxford, the same day.

Worcestershire, at Worcester, Wednesday, Feb. 24.
At the City and County of the City of Worcester, the same day.

Radnorshire, at Presteigne, Friday, Feb. 26.
Herefordshire, at Hereford, Monday, March 1.
Brecknockshire, at Brecon, Wednesday, March 3.
Carmarthenshire, at Carmarthen, Friday, March 5.
At the Borough and County of the Borough of Carmarthen, the same day.

Cardiganshire, at Cardigan, Monday, March 8.
Pembrokeshire, at Haverfordwest, Wednesday, March 10.

At the Town and County of the Town of Haverfordwest, the same day.

Glamorganshire, at Swansea, Friday, March 12.
Glamorganshire, at Cardiff, Monday, March 15.
Monmouthshire, at Monmouth, Wed., March 17.
Gloucestershire, at Gloucester, Friday, March 19.
At the City and County of the City of Gloucester the same day.

Somersetshire, at Bath, Monday, March 22.
At the City and County of the City of Bristol, Tuesday, March 23.

Somersetshire, at Taunton, Thursday, March 25.
Devonshire, at Plymouth, Saturday, March 27.
Cornwall, at Bodmin, Tuesday, March 30.
Devonshire, at the Castle of Exeter, Thursday, April 1.

At the City and County of the City of Exeter, the same day.

Dorsetshire, at Dorchester, Tuesday, April 6.
County of the Town of Southampton, Thursday, April 8.

Wiltshire, at Salisbury, Friday, April 9.
Southampton, at Winchester, Saturday, April 10.

HOME CIRCUIT.

William John Law, Esq., Commissioner.
Kent, at Maidstone, Saturday, March 6.

At the City and County of the City of Canterbury, Tuesday, March 9.

Kent, at Dover, Wednesday, March 10.
Sussex, at Lewes, Wednesday, March 24.
Hertfordshire, at Hertford, Wednesday, March 31.

NORTHERN CIRCUIT.

Charles Phillips, Esq., Commissioner.

Yorkshire, at Sheffield, Thursday, Feb. 11.
Yorkshire, at Wakefield, Friday, Feb. 12.
At the Town and County of the Town of Kingston-upon-Hull, Thursday, Feb. 18.

Yorkshire, at the Castle of York, Saturday, Feb. 20.
At the City and County of the City of York, the same day.

Yorkshire, at Richmond, Tuesday, Feb. 23.
Durham, at Durham, Wednesday, Feb. 24.

Northumberland, at Newcastle-upon-Tyne, Friday, Feb. 26.

At the Town and County of the Town of Newcastle-upon-Tyne, the same day.

Cumberland, at Carlisle, Monday, March 1.
Westmoreland, at Appleby, Tuesday, March 2.
Westmoreland, at Kendal, Friday, March 5.
Lancashire, at Lancaster, Monday, March 8.
Lancashire, at Liverpool, Tuesday, March 16.
Montgomeryshire, at Welchpool, Friday, March 19.
Merionethshire, at Dolgelly, Monday, March 22.
Anglesey, at Beaumaris, Wednesday, March 24.
Carnarvonshire, at Carnarvon, Friday, March 26.
Denbighshire, at Ruthin, Monday, March 29.
Flintshire, at Mold, Tuesday, March 30.
Cheshire, at the Castle of Chester, Thursday, April 1.

At the City and County of the City of Chester, the same day.

THE EDITOR'S LETTER BOX.

It is always with great reluctance that we intrude on our readers anything of a personal nature; but we feel called upon to correct the mistake of the *Morning Herald* of the 10th instant, regarding the supposed proprietors and editors of this work. The learned gentleman referred to is not a proprietor nor an editor of the *Legal Observer*, nor have we the honour of receiving any of his contributions or assistance. It is hardly necessary to say to our readers, that we do not concur in the proposed reforms in the Law of Real Property and Conveyancing. We have for sixteen years steadily opposed a general registry, and our opinions, both of its inexpediency and its impracticability, remain unchanged.

"C., a subscriber to this work from the issuing of its first number, (in 1830,) to this day," thanks "*Vigil*" for his note in our last number. "*Vigil*," he says, will add to the favour by giving the shark's name.

"A Subscriber" inquires whether the Baintree church rate case, which was heard as *Veley v. Burder*, and on appeal, as *Veley v. Gosling*, has been decided by the Judicial Committee of the Privy Council, and if so, whose judgment did they affirm?

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 21, 1846.

———“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

• HORAT.

REVIEW OF RECENT LETTERS ON CONVEYANCING REFORM.

It has been suggested that we should state the substance of the recent controversy, which has appeared in the newspapers, relating to the suggested reforms in the Law of Real Property and the Practice of Conveyancing. We shall proceed to this task, intending to do equal justice to both sides of the question, although we may differ from one party, or concur with the other.

In perusing the statement of the alleged evils in this branch of the law and practice, our readers will be induced, no doubt, justly to distinguish between such of them as relate to *the law itself* and those which concern only *the practice*. For any evil arising from the former, the legislature must bear a due share of responsibility; the latter may partly be ascribed to the lawyers, but we believe that good reasons will be found for the forms and course of proceeding which have been sanctioned by long experience.

It will be desirable also to keep in distinct points of view the evils complained of from the *remedies* suggested, and the *mode of proceeding*, to ascertain the expediency of those remedies. Because, whilst the evils may be admitted *partially* to exist, we may find, on due inquiry, that they are unavoidable; or if not unavoidable, that the remedy suggested is either inexpedient or impracticable, and “the cure worse than the disease” in its effects and consequences.

We shall commence then by quoting the alleged grievances in the present state of the law, according to the two letters of Mr. James Stewart, addressed to “the Members of Agricultural Societies and others interested in Land.”*

The case made by Mr. Stewart is, that the buying and selling of land is both expensive and dilatory; and that if land could be bought, sold, and mortgaged more easily, and thus rendered more available for the owner's necessities, the land would be increased in value. *This is the main point at issue.*

He then says,—

“The law relating to land, so far from being simple or easily comprehended, is the most difficult branch of our jurisprudence: that many lawyers profess not to be well acquainted with it; and that this responsibility is thrown on a comparatively small number even of the learned profession. The laws relating to property should be few and simple. Intricate and difficult questions will no doubt arise in civilized states; but the familiar transactions: the sale and the mortgage should be easily understood and easily performed. We know they are so in personalty, in produce, in stock in the funds. Is it absolutely necessary that the purchase and mortgage of land should be so difficult and so expensive as they now are? The law as to suits and actions may be hard and vexatious, but then few people after all go to law, but almost all are more or less interested in land.”

Mr. Stewart then proceeds to state that

Belgium, Prussia, and France, the transfer of land is nearly as easy and simple as that of stock in the funds.^b The stamp demanded is larger in those countries than here, but the ex-

^b We have already shown that the high price of land in France and Germany is owing to far other and higher causes than the simplicity of the form of conveyance. The sacrifices of the landowners and the tenacity with which they cling to their land in all changes of fortune, is almost incredible. See 32 L. O. 598; 24th Oct.

* See the Times of the 22nd and 30th Oct.
Vol. xxxiii. No. 976.

pense and delay is small, so far as relates to the acts of the parties. This, he says, has been in a striking way exemplified in the railway purchases of land in the respective countries, and that land is, in consequence, more valuable and mortgages effected at an easier rate."

Mr. Stewart then observes, that the primary rules of our laws relating to real property are all founded on *the feudal system*.

"The policy of that system was to restrict, and in some cases actually to prohibit, alienation. It looked upon the alienation of law with disfavour, and it was only by slow degrees that land was emancipated from its most rigorous rules. Many of them have been evaded after a clumsy fashion, and indeed the history of the law down to the present time, is a series of struggles to evade them; but to this day, on every alienation of freeholds, the rules established by the feudal system *must be borne in mind*, and in the alienation of copyholds they are in full force. *The spectre of feudality* still haunts the land, clanking its chains, and rising at the most unforeseen moment to scare the lawful owner from doing what he will with his own."

Taking a brief historical view of the successive changes in the law of real property, Mr. Stewart observes,—

"That down to the end of the reign of Henry VIII., no one could will his *freehold* lands; that down to the 55th Geo. III., no one could will his *copyhold* lands without a previous surrender; and down to the 1st year of the Queen, no one could will his *customary* lands without a previous surrender; that so late as the reign of Wm. IV., an entail could not be barred except by a fictitious suit called a *fine* or a *recovery*; that down to the 4th of the reign of her Majesty *two deeds* were usually employed instead of one in the most simple dealings with land; that down to the commencement of the present year those useless *phantoms* termed 'outstanding terms for years' were in full activity; and that now, according to the established practice, before an acre of land can be sold, its history for the last 60 years must be told." And he adds,—"*The only way of dealing with small interests in land, is to dispense with ceremonies deemed necessary in larger sales, and to take them on trust, without any inquiry as to title at all.*"

We now come to the remedies which it is suggested by Mr. Stewart should be obtained. They are thus stated:—

1. Simplicity and uniformity of tenure.
2. Easy, cheap, and expeditious modes of transfer.
3. Shorter and more simple deeds.
4. A greater certainty as to time in completing the sale and mortgage of land.
5. Some mode of shortening inquiry as to title.

We would submit here, that the second and third proposed remedies seem to be one and the same, for short and simple deeds are of course more easy, cheap, and expeditious in the preparation than long and complicated deeds. And the fourth and fifth also resolve themselves into one point, for if the inquiry into title be shortened, the time for completing the sale may, of course, be more easily fixed.

"In order to gain these desirable objects, let me," says Mr. Stewart, "direct your attention to one or two points which will help us in obtaining them."

1. To make a general map of the country, towards which purpose the Tithe-Commutation, Commons' Enclosure, and the Ordinance Survey will be serviceable. A state map would assist other changes, and would be an exceedingly useful measure in itself.

2. To establish a general registry of titles, which will shorten both deeds and titles.

3. Government to employ competent and unprejudiced persons to consider the whole subject.

We rejoice to find that Mr. Stewart, in his second letter,^b states he has no wish to make any alteration in the law of primogeniture, or in the law of entail. The law of primogeniture, he says, is well adapted to the institutions of this country, and he does not wish to alter those institutions, nor does he at all object to the present law of entail in England, provided every tenant in tail may cut off the entail at 21. These, therefore, do not require alteration. But he contends for easy and inexpensive means of transferring land and facilitating purchases and mortgages. He maintains that—

"Land must be considered as a commodity, whose value varies as any other commodity. In a former age it was treated differently. It was considered as a means of affording a defence to the state. It was governed by a different policy. Every piece of land had an armed warrior to maintain its possession for his lord. The remnant of this system is in existence at this moment as a legal fiction. This ideal *seisin* of land, as it is called, is ever present to the eye of the law and must not be disturbed for a moment, and many absurd consequences still arise from this state of the law. It is of no great practical consequence, but I mention it to show that we are in the habit of treating land as if it was essentially different from other commodities, when the reason for so considering it has entirely ceased. We have hitherto been content to consider it as a distinct article to be dealt in by a few. Now, if anybody thinks that some great *state policy* is involved in it, I shall be quite willing to

^b Times, 30th Oct.

hear him, but as I do not know any one who does think so, I must assume that land, *if it be possible to make it so*, should be dealt in as any other commodity, and that the same rules regulate its value. * * * We require for land a *certain market*, and as *large a class of purchasers* as possible."

"Dealings in land will be increased in number by the simplicity of the system, and the profession will be the first to reap the benefit."

We come now to the counter statements which have appeared in the *Times* newspaper by several writers, the first being "A Conveyancer," whose letter appeared on the 30th October.^d He observes that—

Mr. Stewart concludes that, in part at least, the greater value of land abroad is owing to the facilities of transfer. Now this could only amount to the difference in expense between the respective transfers; but owing to the increased stamp required, the difference can only be trifling, and cannot therefore account for any substantial disparity in value. This difference is principally attributable to the superior advantages for the application of English capital in commerce and speculation. To maintain his proposition, not only ought he to prove that this expense of transfer does occasion this difference, but also, that it is a serious impediment to the free alienation of land, and also, that this alienation occurs more frequently abroad than here. Now he has adduced no such evidence, and we may therefore infer that, with regard to land not rendered inalienable by settlement, alienation is as frequent here as abroad. No practical influence can follow from that insignificant amount of difference, for it cannot be asserted that any party has been deterred from purchasing an estate by reason of the expense of conveyance. Some, perhaps, may object to an attorney's charges, but these would not defeat the purchase, nor be included in the estimate of value.

The true causes of the infrequency of alienation are stated by this writer to be—

1. The locking up most of the large estates in the kingdom in settlement; 2. The aversion of landowners in general to part with an acre of their inheritance; and he observes that a man will sooner encumber an estate to its utmost value than sell any portion of it. The writer then enters

seriatim on the five points of remedy suggested by Mr. Stewart.

1. As regards simplicity of tenure: with the exception of copyholds and customary freeholds, and some few cases of grand serjeanty, this already exists. If this simplicity is to be applied to free and common socage tenure, it ought to have been intimated.

As to uniformity of tenure: it has long been a *desideratum* to convert all property into free and common socage, and it would ere this have been accomplished, had efficient measures been enacted.

2, 3. The objects which are embraced in the second and third remedies, so far as they comprehend the ordinary assurances for transferring property, are, owing to the exertions of the profession, as concise as possible. When a conveyance of lands, exclusive of the parcels, can be prepared as concisely as that of stock, that the legislature has deemed it needful to provide remuneration additional to what the length would have entitled him, no ground of complaint can exist under this head. Some conveyances may be lengthy, but it is not owing to the transfer, but to the complication of interests involved in the transaction. While property is subjected to limitations in strict settlement, with all the powers and charges incident thereon, so long must its ultimate discharge from these interests be complicated and the assurance lengthy. The only remedy is to restrain the powers of disposition, which the agriculturists would probably reject. If landowners would be content with a simple ownership in fee, instead of a more preservative policy, the transfer would be simple, but they and their posterity must submit to the necessary consequences. The same result may be applicable to dealings with personal estate. Mortgages of personal property cannot be effected with greater facility or more concisely than those of real estate, but are in both cases precisely the same, with the exception that in personalty greater care and skill are requisite to guard against an execution creditor and the effects of bankruptcy and insolvency. As to settlements of personalty, they are often as lengthy as those of realty. As to 'expeditiousness,' we may remark that the operation of such assurances is instantaneous; so far as regards their preparation and execution, this is wholly out of the range of legislative provision.

4. With respect to the fourth suggestion, it is sufficient to observe, that by simply making time of the essence of the contract, this object may be effected by ourselves. This is in accordance with Bythewood's Conveyancing, by Parken & Stewart, vol 1, p. 79.

5. The fifth and last proposition involves serious considerations, inasmuch as the only apparent mode of shortening inquiry as to title, is that of shortening the duration of life, in relation to which the rule originated. So long as the days of man are three score years and ten, and life estates are permitted, so will a 60

^c There are some other statements in Mr. Stewart's letters,—addressed rather to the politician and commercial class than the lawyers,—which from our limited space we must omit.

^d We are compelled to abridge some part of this letter, and we have also deemed it proper to omit all personal remarks on Mr. Stewart, either in regard to his position in the profession, or the works of which he is the author.

years' title be essential to a purchaser's protection. For otherwise, if a tenant for life assume the absolute ownership and make a conveyance in fee, under which possession is enjoyed for the requisite period for Mr. Stewart's maximum of title, we have this anomaly: either the purchaser must be protected and the parties entitled in remainder defeated by the act of the tenant for life; or else such person in remainder must recover the estate as against the purchaser, whom a court of equity may have compelled to accept the title.

The future revision of the law should doubtless be entrusted to competent and unprejudiced persons, appointed by the government, and to such persons only. 'Owing to some of the measures of the last few sessions, the Law of Real Property is in a highly unsatisfactory state. What folly to be niggardly about a few shillings in the costs of transfer when the safety of the whole inheritance is at stake!

The first step to be taken towards even a trial of the proposed remedies is, a general survey of the whole country, and the construction of "*a State Map*." On this important point a correspondent in the *Times* of the 5th November, signing himself "Anti-Phantom," says:—

"The scheme of an universal map might be perfect if we had attained to the age of stagnation, and could assume that the phase of property would remain perpetually unaltered; and undoubtedly in many respects such a map would be a great acquisition; but where *absolute precision* and accuracy are essential, as undoubtedly they would be if the maps were to be considered as the necessary evidence of title, the tithe maps could not be used, landowners having on the occasion of the tithe commutation been allowed to make use of any old plans, having them reduced or extended to a particular scale.

"We, however, live in an age of changes, and I would ask whether, if the most accurate survey possible had been taken thirty years ago of the parish of Paddington, with its paddocks, meadows, and corn fields, such a survey would now facilitate its conveyance of a house in Cambridge Square or Oxford Terrace, or what identity could be shown between the fields of St. Giles and St. Giles in the Fields, even assuming that a correct survey had been made in bygone days? The difficulty of getting accurate surveys is no trifling obstacle, and the committees of the houses of parliament in recent sessions could bear ample testimony to the liability to inaccuracy."

And then it is properly asked—

"Is a party, on every occasion of sub-dividing his land, to have the government map made correct, and if so, at whose expense, or by what authority is the survey to be made and the plan corrected? If an owner, on every occasion of letting off a portion of a close on building lease, or on every change, however

slight, in the phase of his property,—on building a barn or pulling down a cottage,—is to be at the expense of setting a government office in motion, and having an authorized government surveyor for the purpose, any supposed advantage derived from the plan will be very dearly bought. As a means of shortening conveyances by allowing mere references to the numbers in the map, I feel convinced it will be found practically useless after the lapse of a few years, especially in those places where the greatest interchange of property is continually taking place."

It may be inquired also, how are the multitude of questions on *disputed boundaries* to be adjusted, and at whose expense? Are juries to be summoned? And who are to be parties to the investigation?—tenants for life,—trustees,—reversioners,—leaseholders, &c. &c.? This writer also states from his experience as to the law of real property in agricultural districts—

"That Mr. Stewart cannot be correct in supposing that where a man is possessed of 100*l.* or 150*l.*, or even a smaller sum, he is by the expense of conveyance deterred from investing it in land, or even that the expense would be lessened if he had to search a general registry for all deeds executed by the John Smiths." And in proof of his statement he refers to the Register of Electors.

On the proposition of a *general registry of deeds* it is urged, (as often has been done in these pages,) that its advocates should "first try their skill in perfecting one of the *existing registries*, and when they can show that they have attained perfection in one instance, there will be no difficulty in extending it to the whole country, if the benefits be as great as they proclaim." The opinions of Sir Edward Sugden, published after long experience, and when his position had placed him far beyond any liability to the imputation of selfish motives, are cited by this writer. We shall take a proper opportunity of giving those opinions more fully than could be expected in the columns of a newspaper.

Another correspondent, under the initial "B,"^d also addresses the territorial aristocracy, and maintains that the trade in land may be too free, and that a considerable degree of permanency in landed proprietorship is a vital element in the political and moral constitution of this kingdom. And he thus enumerates a few of the points in which land differs from all

other subjects of property, except perhaps a few works of art.

"1. It alone produces interest independently of barter.

"2. It is imperishable.

"3. No one acre is equal to or a substitute for another.

"4. Its quantity is limited and cannot by possibility be increased.

"5. It confers political rights and influence.

"From each of these considerations, many important deductions might be elicited which the legislature must consider before land be treated as a common 'commodity.'"

It is due to Mr. Stewart to extract from his second letter the following remarks, which he addresses to the members of his own profession.

"Many who are most competent to form an opinion on the subject, agree with me in thinking that the time is come when a great change is necessary. But there are many others who believe that their own interests are bound up in the present system. I do respectfully beg these last to consider this well. No one proposes to dispense with professional services in dealings with land. Let them, then, remember that if these are greatly increased in number, the profession who assist in making them will be the first to benefit by the change. What motive can I have in urging a measure injurious to my own branch of the profession? If there be poison in the cup which I ask my brethren to drink, I myself must suffer from its contents. Let us, then, approach this inquiry with calm and unprejudiced minds, and I am sanguine enough to hope that all classes will be benefited by it, and the legal profession among others."

Thus have we given the principal statements and arguments on both sides of the question. "We have nothing extenuated, nor set down aught in malice." Already "the nine days" usually devoted to the most exciting topics have passed; but as the subject will doubtless be revived on the approach of parliament, we have here put on record the present state of the question, in order that its future discussion may be better understood.

LAW RELATING TO CHEQUES ON BANKERS.

THE vast extent to which pecuniary transactions are conducted, especially in the metropolis and other large towns in the kingdom, by means of bankers' cheques, renders it almost a matter of vital necessity that men of business and their professional advisers should be accurately acquainted with the law relating to those in-

struments, so far as it can be collected from adjudged decisions. The importance of the subject becomes more apparent when we find, from the practice of the great bulk of the commercial community, that the general understanding which has prevailed as to the existing state of the law is not altogether correct, and that the text books constantly consulted have not in every instance proved trustworthy guides.

It is notorious that a large proportion of the bankers' cheques issued in the metropolis are not presented for payment directly by the payee or his servant, but through the instrumentality of other bankers; and this system, independent of its salutary tendency as regards the currency of the country, is found to be a great protection against forgery and accidental loss. To facilitate the exchange of cheques, nearly all the city bankers use what is known as the "clearing house,"

the course of business amongst such bankers is, with regard to cheques paid in before four o'clock in the afternoon and drawn upon bankers eastward of St. Paul's who are members of "the clearing house," to exchange such cheques on the same day; but if a check is paid in after four o'clock, or is drawn upon a banker not being a member of "the clearing house," the invariable practice is, not to present such cheque for payment until the day following that on which the cheque was paid in by the customer to his banker. It seems to have been almost universally considered, that the payee or holder of a cheque incurred no additional risk in consequence of the course of business pursued by the London bankers. This notion might have been encouraged and confirmed by the established law with regard to bills of exchange and notes, in presenting which bankers are allowed an additional day as if they held as indorsees and not as agents; and it was supposed that the presentation of a cheque to the drawee stood upon the same footing. Founding his opinion upon that assumption, Mr. Roscoe, in his treatise on bills, laid down the rule as follows:—"Where a cheque is delivered to the banker of the holder for the purpose of obtaining payment, the banker has the same time to present it as a fresh holder would have had, viz., the whole of the business hours of the day next after that on which he receives it." According to a recent decision of the

Court of Common Pleas,^b the assumption that a fresh holder would have an additional day, though true as regards a bill or note, is erroneous as respects a banker's cheque. No additional time is in general allowed for presenting a cheque through a banker any more than if it remained in the hands of the payee, and if it be not presented for payment during business hours on the day following that on which it has been received, the drawer is discharged, and the loss falls on the payee, if the banker fails with money of the drawer's in his hands after the time when the cheque should have been presented.

In the case in which the point of law was thus determined, the undisputed facts^c upon which it arose were simply as follow :—The defendant handed to the plaintiff, in the afternoon of Tuesday the 10th March, a cheque drawn by the defendant on Young and Son, his bankers. On the morning of Wednesday the 11th March, the plaintiff paid his cheque into the bank of Whitmore & Co., by whom it was presented to Young & Son on the morning of Thursday the 12th March, and dishonoured, Young & Son having that morning stopped payment. The defendant had ample funds in the hands of Young & Son, and if the cheque had been presented to them during business hours on Wednesday, it would have been paid.

The substantial question was, whether, under these circumstances, the drawer or the payee was bound to bear the loss? It was admitted on all hands, that if a cheque drawn upon a banker living in the same town is presented on the day following that on which it is received from the drawer, it must be considered to have been presented within a reasonable time; but it was contended for the plaintiff, that if the holder of a cheque desires to procure payment through his banker, he is entitled to keep it during the day he receives it, to pay it the next day to his banker, and the banker to present it to the drawee on the following day. In other words, that the holder has one day more for presenting a cheque through his banker than if he presented it himself.

^b *Alexander v. Burchfield*, 7 M. & G. 1061.

^c There was a disputed question of fact, arising upon contradictory evidence as to what passed between the parties when the cheque was delivered to the plaintiff, but this question was settled by the verdict of the jury, and was wholly irrespective of the point determined by the court.

In the course of the argument several cases were cited relating to bills of exchange, as well as cheques, but the case which came nearest to that under consideration, and the only one referred to in the judgment of the court, was *Richford v. Ridge*.^d In that case the holder of the cheque had discounted it with a banker in the country, by whom it was sent up on the following day to his London correspondents, who presented it the day after they received it, but in the meantime the party on whom it was drawn had become insolvent. In that case it was held that the payee, and not the banker, was bound to incur the loss, but the Court of Common Pleas distinguished that case from *Alexander v. Burchfield*, on the ground that the defendant, by discounting his cheque in the country, must be taken to have assented to that being done which was the usual and necessary course to produce payment of the cheque. The other cases cited only established, that in the case of a bill of exchange, one day more is allowed for giving notice of dishonour when the bill is presented through a banker, than if presented by the party himself, but no case was adduced to show that any additional time was allowed under such circumstances for presenting the bill for payment, which would have been more in point.

The judgment of the court on the question of law was delivered, after consideration, by the late Chief Justice *Tindal*, who, after remarking on the absence of evidence of any course of dealing between the parties from which a contract could be implied, and of authority to show that the drawer was bound to pay, proceeded to observe, under the circumstances disclosed, "we cannot feel ourselves justified in laying it down as a rule of law that the holder of a cheque is entitled to one day more for presenting it, by passing it through his banker's. Nor can we see that such rule is called for as a matter of expediency or of pressing convenience. In the case of a cheque, the holder does not lose his remedy against the drawer by reason of non-presentation within any prescribed time after taking it, unless the insolvency of the party on whom it is drawn has taken place in the interval; that is, unless there is an actual loss to the drawer. And the instances of any such loss happening by reason of the insolvency of the

drawees taking place during the additional time for presentment which is claimed and contended for on the part of the plaintiff, are probably so very few in the course of mercantile concerns, that it can scarcely be said to be an evil calling for an extension of the time of presentment; more particularly as the party who receives the cheque may always protect himself against any danger of the insolvency of the drawee, where he intends the cheque to pass through his bankers', by stipulating that his bankers' names shall be crossed upon the cheque, which would amount to an agreement on the part of the drawer of the cheque that the usual course of presentment through a banker should be observed." Upon these grounds the court determined that the verdict taken for the defendant should stand, and in effect, that the payee of the cheque had, under the circumstances of the case, no remedy against the drawer.

The learned reporter of *Alexander v. Burchfield*, in reference to the suggestion, that the stipulation that the payee's banker's name should be indorsed on the cheque would create an implied agreement on the part of the drawer to have the cheque presented by a banker in the usual course, acutely observes, that although such an agreement might reasonably be implied when a check was delivered to a payee at too late an hour to render it probable it should be paid on the day it was received, when the cheque is delivered in the early part of the day, the stipulation as to crossing it would not be inconsistent with an intention to cause it to be presented within the usual period. We may also add that, inasmuch as the failure of a bank is fortunately not a matter of every day occurrence, it is quite true that the instances are not many in which the payee of a cheque will suffer a loss by reason of the drawee becoming insolvent during the day on which the payee's banker retains the cheque; but it is quite possible, and even probable, that the stoppage of a London banker may furnish a hundred cases on all fours with that of *Alexander v. Burchfield*, and it may be deserving of consideration, whether some plan might not be adopted by bankers to relieve their customers from the additional risk occasioned by the delay in the presentation of cheques, to which the present course of business gives rise. However this may be, the rule which this case establishes is, that the holder of a cheque is in general

bound to present it for payment not later than the day following that on which he receives it, whether the presentment is made by himself or through a banker.

The risk which the holder incurs by accepting a cheque which is post dated will be more conveniently considered in a future number.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

REMOVAL OF NUISANCES.

9 & 10 VICT. c. 96.

An Act for the more speedy Removal of certain Nuisances, and to enable the Privy Council to make Regulations for the Prevention of contagious and epidemic Diseases until the Thirty-first Day of August, One thousand eight hundred and forty-seven, and to the End of the then next session of Parliament. [28th August, 1846.]

1. *Certain public officers, on receipt of the certificate of two medical men, may complain of the existence of nuisances.*—9 G. 4, c. 82.—*The justices to whom the complaint is made required to summon parties complained against.—The order or a copy to be served or affixed to the premises.—If the order be not obeyed, the parties complaining may enter on the premises and remove the nuisance.*—Whereas it is highly expedient for the purpose of preserving the health of divers of her Majesty's subjects that better provision should be made for the removal of certain nuisances likely to promote or increase disease: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful for any town council or other like body having jurisdiction within any corporate town, borough, city, or place, or any trustees or commissioners or other like officers acting under the provisions of any act of parliament for the drainage, paving, or cleansing, or managing or directing the police, in any town, borough, city, or place, or for any of the above purposes, or for commissioners acting under the provisions of an act passed in the ninth year of the reign of his Majesty King George the Fourth, intituled "An Act to make Provision for lighting, cleansing, and watching Cities, Towns Corporate, and Market Towns in Ireland, in certain cases," or in case there shall be no such town council or other like body, or no such trustees or commissioners having jurisdiction or acting as aforesaid, in any town, borough, city, or place, then it shall be lawful for the guardians of the poor, upon receiving a certificate in writing in the form contained in schedule (A.) to this act annexed, or to the like effect, signed by two duly qualified medical practitioners, of the filthy and un-

wholesome condition of any dwelling house or other building, or of the accumulation of any offensive or noxious matter, refuse, dung, or offal, or of the existence of any foul or offensive drain, privy, or cesspool, to lay a complaint before any two justices of the peace, and such justices, upon the production of such certificate as aforesaid, shall forthwith summon, in the form contained in schedule (B.) to this act annexed, or to the like effect, the owner or occupier of the premises described in such certificate to appear before them or some other justices to answer the matters of complaint alleged in such certificate, and if such owner or occupier shall not appear at the time and place named in such summons, or having appeared shall not show sufficient cause to the contrary, or if there is no owner or occupier, or if it appears that no owner or occupier can be found, and upon proof that a copy of the said summons was left on the premises in the summons mentioned, then in either of the cases aforesaid such justices, upon proof to their satisfaction of the existence of the nuisance in the said certificate described, shall forthwith make an order in writing under their hands and seals in the form contained in schedule (C.) to this act annexed, or to the like effect, for the cleansing, whitewashing, or purifying of any such dwelling house or other building, or for the removal or abatement of the nuisance in the said certificate described, within the period and in the manner in the said order to be prescribed (such period not being more than two clear days, of which Sunday shall not be one, after notice of the making of the said order has been given in pursuance of the provisions of this act); and such order, or a true copy of the same, shall be forthwith served upon the owner or occupier respectively of the premises or place mentioned in such order, or if there be no such owner or occupier, or if such owner or occupier cannot be served, then such order or a true copy thereof shall be forthwith affixed upon some part of such premises or place as aforesaid; and if the dwelling house or other building in the said order mentioned shall not be cleansed, whitewashed, or purified, or if the nuisance in the said order described shall not be removed or abated, within the period and in the manner in the said order mentioned, it shall be lawful for the persons who made the complaint, and who shall be authorized by the said justices so to do, by themselves, their servants, and others, to enter any dwelling house or other building or place in the said order mentioned, to cleanse, whitewash, or purify such dwelling house or other building, or to remove or abate the nuisance in the said order described; and if any person shall wilfully obstruct any person acting under the authority and in pursuance of any order made under the provisions of this act he shall be liable to a penalty not exceeding 10*l.* nor less than 2*l.* for every such offence.

2. *Costs and expenses incurred by the parties complaining may be recovered from the owner or occupier of the premises on which the nuisance*

existed.—And be it enacted, That it shall be lawful for the persons who shall have made such complaint as aforesaid to take proceedings to recover from the owner or occupier of any dwelling house or other building or place in any such order as aforesaid mentioned, the costs and expenses incurred by them in obtaining such order or in removing or abating any nuisance, and otherwise carrying such order into effect; and any two justices, upon the application of such persons so complaining, shall summon such owner or occupier to appear before them at a time and place to be named in such summons; and upon the appearance of such owner or occupier, or in his absence upon proof of due service of the summons, such justices, upon proof that such costs and expenses as aforesaid have been incurred by the said persons so complaining, shall (unless they shall think fit to excuse the party so charged on the ground of poverty or other special circumstances) order such owner or occupier to pay the amount thereof to the said persons so complaining, together with the costs attending such summons and hearing; and if the same shall not be paid by the parties liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the parties liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or any two other justices, on application, shall issue their warrant accordingly.

3. *Certain public officers in Scotland, on receipt of the certificate of two medical men, may complain of the existence of nuisances in Scotland.*—8 & 9 Vict. c. 83.—*The sheriff or justices to whom the complaint is made required to order the attendance of the parties complained against.—The order or a copy thereof to be served or affixed to the premises.—If the order be not obeyed the parties complaining may enter on the premises and remove the nuisance.*—And be it enacted, That it shall be lawful for the magistrates and councillors or other like body having jurisdiction within any burgh, town, city, or place in Scotland, or any trustees or commissioners acting under the provisions of any act of parliament for the drainage, paving, or cleansing, or managing or directing the police, in any burgh, town, city, or place in Scotland, or for any of the above purposes, or in case there shall be no such magistrates or councillors or other like body, or no such trustees or commissioners having jurisdiction or acting as aforesaid, in any burgh, town, city, or place, then it shall be lawful for the parochial board for the management of the poor in Scotland established under the provisions of an act of parliament passed in the session held in the 8 & 9 Vict., intituled “An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in Scotland,” upon receiving a certificate in writing in the form aforesaid, or to the like effect, signed by two duly qualified medical practitioners, of the filthy and unwholesome condition of any dwelling house or other build-

ng, or of the accumulation of any offensive or noxious matter, refuse, dung, or offal, or of the existence of any foul or offensive drain, privy, or cesspool, to lay a complaint in writing before the sheriff or any two justices of the peace, and such sheriff or justices, upon the production of such certificate as aforesaid, shall forthwith order the owner or occupier of the premises described in such certificate to appear at a time and place to be named in such order, to answer the matters of complaint alleged in such certificate, and every such order shall be served upon the owner or occupier of the premises described in such certificate, either in person or by leaving or affixing a copy of the same at or upon the premises, and either upon appearance or failing to appear of such owner or occupier, or if there be no owner or occupier, or if it appear that no owner or occupier can be found, then in either of such cases it shall be lawful for the sheriff or justices to proceed to the hearing of the complaint, and upon proof to their satisfaction of the existence of the nuisance in the certificate described, either by the confession of the party so complained against, or upon proof by legal evidence, and without any written pleadings or record of evidence, they shall forthwith make an order in writing in the form aforesaid or to the like effect, under his or their hands or seals, requiring such owner or occupier to cleanse, whitewash, or purify any such dwelling house or other building, or to remove or abate the nuisance in the certificate described, within the period and in the manner in the said order to be prescribed (such period being not more than two clear days, of which Sunday shall not be one, after notice of the making of the said order has been given in pursuance of the provisions of this act;) and such order, or a true copy of the same, shall be forthwith served upon the owner or occupier respectively of the premises or place mentioned in such order, or if there be no such owner or occupier, or if such owner or occupier cannot be served, then such order, or a true copy thereof, shall be forthwith affixed upon some part of such premises or place as aforesaid; and if the dwelling house or other building in the said order mentioned shall not be cleansed, whitewashed, or purified, or if the nuisance in the said order described shall not be removed or abated within the period and in the manner in the said order mentioned, it shall be lawful for the persons who made the complaint, and who shall be authorized by the said sheriff or justices so to do, by themselves, their servants and others, to enter any dwelling house or other building or place in the said order mentioned, to cleanse, whitewash, or purify such dwelling house or other building, or to remove or abate the nuisance, in the same order described; and if any person shall wilfully obstruct any person acting under the authority and in pursuance of any order made under the provisions of this act, he shall be liable to a penalty not exceeding 10*l.* nor less than 2*l.* for every such offence.

4. *Costs and expenses incurred by the parties complaining may be recovered from the owner or occupier of the premises on which the nuisance existed.*—And be it enacted, That it shall be lawful for the persons who shall have made such complaint as aforesaid to take proceedings to recover from the owner or occupier of any dwelling house or other building or place in any such order as aforesaid mentioned the costs and expenses incurred by them in obtaining such order, or in removing or abating any nuisance, and otherwise carrying such order into effect; and any sheriff or two justices, upon the application of such persons so complaining, shall issue an order requiring such owner or occupier to appear before him or them at a time and place to be named in such order, and upon the appearance of such owner or occupier, or in his absence upon proof of due service of the order, such sheriff or justices, upon proof that such costs and expenses as aforesaid have been incurred by the said persons so complaining, shall (unless he or they shall think fit to excuse the party so charged on the ground of poverty, or other special circumstances,) order such owner or occupier to pay the amount thereof to the said persons so complaining, together with the costs attending such order and hearing, and if the same shall not be paid by the parties liable to pay the same within seven days after demand, the amount may be recovered by pouncing and sale of the goods of the parties liable as aforesaid, and the sheriff or justices by whom the same shall have been ordered to be paid, or any two other justices, on application, shall issue their warrant accordingly.

— *Privy council, &c in England and Ireland, empowered to issue orders at any time to prevent the spreading of contagious or epidemic diseases.*—And whereas cases may occur where cities, towns, or places may be threatened with or affected by formidable, contagious, or epidemic diseases, and it may be impossible to establish rules for the prevention thereof by the authority of parliament with sufficient promptitude to meet the exigency of each case, and it is therefore expedient to enable the lords of her Majesty's most honourable privy council to issue orders in England and Scotland, and the Lord Lieutenant and privy council of Ireland to issue orders in Ireland, from time to time for that purpose; be it therefore enacted, That if any city, town, burgh, or place shall hereafter be threatened with or affected by such formidable contagious or epidemic diseases, it shall be lawful in England and Scotland for the lords and others of her Majesty's most honourable privy council, or any three or more of them, (of whom the lord president of the council or one of her Majesty's principal Secretaries of State for the time being shall always be one,) or in Ireland for the Lord Lieutenant and privy council of Ireland, by any order or orders to be by them from time to time made, to establish, and again from time to time by any such order or orders to revoke, renew, alter, and vary, all such rules and regulations, or to sub-

stitute any such new rules and regulations, as to them may appear necessary or expedient for the prevention, as far as may be possible, of any such contagious or epidemic diseases, or for the relief of any persons suffering under or likely to be affected by any such diseases, and for the safe and speedy interment of any person who may die of any such diseases.

6. *Orders to be certified by clerks of the privy council, and when published, received as evidence.*—And be it enacted, That every such order as aforesaid relating to England or Scotland shall be certified under the hand of one of the clerks in ordinary of her Majesty's privy council in England, and every such order relating to Ireland shall be certified under the hand of one of the clerks of the privy council thereof, and that the publication of any such order for England or Scotland in the *London Gazette*, or for Ireland in the *Dublin Gazette*, shall for all intents and purposes be taken, admitted, and received in all courts, and by and before all judges, justices, magistrates, sheriffs, and others, as good and sufficient evidence of the making and of the date and contents of any such order.

7. *Penalty for violation of orders.*—And be it enacted, That any person who shall or may violate or wilfully and knowingly infringe the provisions of any such order, or who shall or may refuse or wilfully neglect or omit to act in obedience to or in conformity with any such order, or who shall resist, oppose, or obstruct the lawful execution thereof, shall for every such offence incur and become liable to a penalty not exceeding 5*l.* nor less than 1*l.*, to be recovered in the manner herein after mentioned.

8. *Proceedings in case of information, &c. in England or Ireland.*—And be it enacted, That any penalty imposed by this act for any offence committed in England or Ireland may be recovered by any person who may sue for the same before any two justices, and it shall be lawful for any two justices, in all cases where any information shall be laid before them on oath of any offence against the provisions of this act, and they are hereby required to issue their summons to any person whom they may have reason to suppose capable of giving any material evidence on the hearing of such information, requiring every such person to appear and give evidence at a time and place to be specified in such summons; and if any person so summoned shall not appear before such justices at the time and place so specified in the said summons, or shall not offer any reasonable excuse for such default to the satisfaction of the said justices, or appearing shall not submit to be examined as a witness, then and in every such case it shall be lawful for the said justices and they are hereby authorized (proof on oath, in the case of any person not appearing to such summons, having been first made before such justices of the due service of such summons on such person by delivering the same to him or by leaving the same at his usual place of abode), by warrant under the hands and seals of such

justices, to commit any such person so making default as aforesaid to some gaol or house of correction within the jurisdiction of the said justices for any time not exceeding fourteen days, or until such person shall submit to be examined and give evidence.

9. *Justices empowered to levy penalties by distress and sale of goods, &c. In case offender hath not goods, &c. justices may commit.*—And be it enacted, That all justices in England or Ireland shall and are hereby empowered, on the conviction of any person before them for any such offence as aforesaid, in default of payment of any such penalty as aforesaid, to cause the same to be levied by distress and sale of the goods and chattels of the offender by warrant under the hands and seals of such justices, together with the reasonable costs of such distress and sale; and in case it shall appear to the satisfaction of such justices, either by the confession of the offender or by the oath of one or more credible witness or witnesses, that such offender hath not goods and chattels within the jurisdiction of such justices sufficient whereon to levy any such costs and charges, such justices may, without issuing any warrant of distress, commit such offender to any such gaol or house of correction as aforesaid for any time not exceeding 14 days, unless such penalty, costs, and charges be sooner paid, in such manner as if a warrant of distress had issued and a return of *nulla bona* made thereon, in which case also it shall be lawful for such justices to commit any such offender for such term of 14 days, or for any shorter period, to any such prison as aforesaid.

10. *Recovery of penalties in Scotland. Sheriff or justices empowered to determine complaints.*—And be it enacted, That with regard to the proceedings for the recovery of penalties in Scotland, any such penalties imposed by this act may be recovered by the procurator fiscal of the court, or any person or persons who shall sue for the same, before any sheriff or two justices of the peace; and it shall be lawful for the sheriff or justices before whom any complaint for the recovery of any penalties may be brought to proceed in a summary way, and to grant warrant for bringing the parties complained upon immediately before them, and, on proof on oath by one or more credible witnesses or other legal evidence, forthwith to determine and give judgment in such complaint, without any written pleadings or record of evidence, and to grant warrant for the recovery of all penalties and expenses decerned for, failing payment within eight days after conviction, by pouding and imprisonment for a period at the discretion of the sheriff or justices not exceeding 14 days.

11. *Application of penalties.*—And be it enacted, That all penalties imposed by the authority of this act shall be applied in or towards the relief of the poor of the parish or place in which any offence as aforesaid may have been committed.

12. *Orders of council to be laid before parliament.*—And be it enacted, That every order which may be so made as aforesaid by the lords

of her Majesty's privy council, or by any three or more of them, or by the Lord Lieutenant and privy council of Ireland, shall be forthwith laid before both houses of parliament, if parliament shall be then sitting, and that such orders as shall be so made when parliament shall not be sitting shall be laid before both houses of parliament within 14 days next after the commencement of the first session which shall ensue upon the date of any such order.

13. *Justices may order payment of monies expended for the purposes of this act.*—And be it enacted, That all and every expense which may be reasonably and properly incurred in carrying into effect any of the provisions of this act relating to the cleansing of houses, or to the removal of nuisances, and not recovered from owners or occupiers under the provisions herein-before contained, or to any proceedings had or taken in pursuance of any order issued under the authority of this act for prevention of any formidable, contagious, or epidemic diseases, shall be detained or defrayed out of the rates or monies raised or contributed for the relief of the poor of the parish or extra-parochial place maintaining its own poor in which the same shall be so incurred, and in other extra-parochial places out of the poor's rate of the parish nearest adjoining; and it shall be lawful for any two justices and they are hereby required to order and direct from time to time, as occasion may require, the treasurer of the guardians, or other officer of the union or parish, or the overseer of the parish in which any such expense shall have been so incurred as aforesaid, to pay such sums as may be expressed in such order out of any monies which may come into his hands by virtue of his office; and in case any such treasurer, other officer, or overseer on whom any such order shall be made shall neglect or refuse to pay the said money so named in such order for the space of 20 days, it shall be lawful to recover the same by distress and sale of his or their goods and chattels, together with the costs thereof, by warrant under the hand and seal of any two justices authorized to make such order for payment.

14. *Definition of the word "owner."*—And be it enacted, That for the purposes of this act, and in order to prevent any dispute touching the word "owner," the person receiving the rents of any property from the occupier thereof on his own account, or as trustee or agent for any other person, shall be deemed the owner of the same for all such purposes.

15. *Act not to extend to certain places.*—Provided always, and be it enacted, That nothing in this act contained shall extend or apply to any place in which a medical officer of health and an inspector of nuisances has been or may hereafter be appointed under any local act passed in the present session of parliament.

16. *Proceedings not to be quashed for want of form.*—And be it enacted, That no order or any other proceeding or thing done or transacted relative to the execution of this act shall be quashed or vacated for want of form, nor

shall the same be removed by certiorari or otherwise into any of the superior courts.

17. *Interpretation of act.*—And be it enacted, That in this act the following words and expressions shall have the meaning hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,) the words "justice or justices" shall mean justice or justices of the peace respectively acting for the county, city, borough, liberty, cinque port, or place where the matter requiring the cognizance of any such justice or justices respectively shall arise, and who shall not be interested in the matter; and the word "sheriff" shall mean the sheriff of any county or place in Scotland where the matter requiring the cognizance of any such sheriff shall arise, and who shall not be interested in the matter; the words "guardians of the poor" shall mean the guardians, directors, wardens, governors, or other like officers having the management of the poor, for any union, parish, township, hamlet, or place where the matter requiring the cognizance of any such officers as aforesaid respectively may arise, and the overseers of every parish, township, hamlet, or place in which relief to the poor shall not be administered by guardians; and words and expressions importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

18. *Continuance of act.*—And be it enacted, That this act shall continue in force until the 31st day of August, 1847, and from thence until the end of the then next session of parliament.

19. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this present session of parliament.

THE SCHEDULES TO WHICH THIS ACT REFERS.

SCHEDULE (A) s. 1.

Certificate of Medical Practitioners.

To the town council, &c., or to the guardians of the poor of the union or parish [as the case may be.]

WE, the undersigned A. B. and C. D. two duly qualified medical practitioners, residing at [insert name of the parish,] having viewed the dwelling house occupied by one X. Y. [or a certain piece of land near the King's Head Public House, or certain premises occupied by one Y. Z., as the case may be, describing the premises,] situate in Street in the parish of in the county of do hereby certify, That the said dwelling house is in a filthy or unwholesome state, [or that there is an accumulation of offensive or noxious matter, refuse, dung, and offal on the said piece of land, or that there is a foul and offensive drain, privy, or

cesspool on the said premises occupied by Y. Z., situate, &c., as the case may be,] and that the same is likely to be prejudicial to the health of the occupiers, or of the persons whose habitations are in the neighbourhood of the above-mentioned premises. Witness our hands this day of 18

(Signed) A. B.
C. D.

Members of the Royal College of Surgeons.
[as the case may be]

SCHEDULE (B.) s. 1.

Summons of Justices.

To the constable of and all other persons whom this may concern.

County of) WHEREAS complaint hath
[or Borough, &c.] been this day made before
of) to wit.) us, B. C. and E. F., Esquires,
two of her Majesty's justices of the peace acting in and for the said county of [or borough, &c.] by the town council of [or guardians of the poor, as the case may be,] setting forth that a certain dwelling house occupied by one X. Y. situate in [describing the premises] is in a filthy and unwholesome state [or that there is an accumulation of offensive or noxious matter, dung, refuse and offal on a certain piece of land situate in [describing the premises,] or that there is a foul and offensive drain, privy or cesspool in certain premises occupied by one X. Y. situate in [describing the premises,] and the certificate in writing under the hands of A. B. and C. D., two duly qualified medical practitioners, certifying that the same is likely to be prejudicial to the health of the occupiers, or of the persons whose habitations are in the neighbourhood thereof, having been also produced before us at the time of making the said complaint; these are therefore to command you forthwith to summon the said X. Y. the occupier [or Y. Z., the owner of the said premises, as the case may be,] to appear before two of her Majesty's justices of the peace at on the day of next, at the hour of o'clock, to answer the matter of the said complaint.

Given under our hands and seals the day of A. D. 18

B. C. (L. S.)
E. F. (L. S.)

SCHEDULE (C.) s. 1.

Order of Justices.

To X. Y. [owner or occupier, if any such there be,] and to the town council &c., or, to the guardians of the poor of the union or parish [as the case may be,] and to their servants, and to all other persons whom this order may concern:

County of) WHEREAS on the day
[or Borough, &c.] of last complaint
of) was made before B. C. and

E. F., two of her Majesty's justices of the peace acting in and for the county of [or borough, &c., of as the case may be,] by the town council, &c., [or by the guardians of the poor of the union, as the case may be,] that the dwelling house occupied by the said X. Y. situate in Street in the parish of in the said county of [describing the premises,] was in a filthy and unwholesome state [or that there was an accumulation of offensive or noxious matter, refuse, dung, and offal on a certain piece of land near the King's Head Inn, situate, &c., or that there was a foul and offensive drain, privy, or cesspool in certain premises occupied by one Y. Z. situate, &c., as the case may be,] and the certificate in writing under the hands of A. B. and C. D. of being two duly qualified medical practitioners, addressed to the town council, &c., [or to the guardians of the poor of the union, as the case may be,] certifying that the same was likely to be prejudicial to the health of the occupiers, or of the persons whose habitations are in the neighbourhood thereof, having been produced before the said justices at the time of the making of the said complaint: And whereas the said X. Y., the owner [or occupier] of the said dwelling house [or of the said piece of land, or of the said premises] herein-before described, has this day appeared before us, B. C. and E. F., two of her Majesty's justices of the peace acting in and for the said county [or borough, &c.,] in pursuance of a summons duly served upon him in that behalf, to answer the matter of the said complaint, [Or, if the summons has not been served, And whereas it has been proved on oath before us, B. C. and E. F., two of her Majesty's justices of the peace acting, &c., that the said X. Y., the owner [or occupier] of the said premises in the said certificate mentioned, could not be found, and that a true copy of a summons requiring the said X. Y. to appear this day before us to answer the said complaint was left on the said premises.] Now we, the said justices, having heard the said complaint, and examined the fact and all proper witnesses upon oath, and the existence of the nuisance in the said certificate described having been proved on oath to our satisfaction, do hereby, in pursuance of the statute in that case made and provided, order the said X. Y., the owner [or occupier, as the case may be,] of the said dwelling house [or of the said piece of land, or of the said premises occupied by Y. Z.,] within hours from the service of this our order, or a true copy thereof, on the said X. Y., or if service cannot be forthwith effected upon him, then within hours from the period when this our order, or a true copy thereof, shall have been affixed upon some part of the said premises, to whitewash, cleanse, and purify the said dwelling house, [or to remove or abate the said accumulation of offensive or noxious matter, refuse, dung, and offal from the said unoccupied piece of land, or to cleanse the said foul and offensive drain, privy, or cesspool.] and if default shall

be made by the said X. Y. in obeying this our order, then we, the said justices, authorize and require, order, and direct you, the said [town-council, &c., or guardians of the poor,] to enter upon the said premises, and to cleanse, white-wash, and purify the said dwelling house, [or to remove or abate the said accumulation of offensive or noxious matter, refuse, dung, and offal from the said piece of land, or to cleanse the said foul and offensive drain, privy, or cesspool.]

And for your so doing this shall be your sufficient warrant and authority.

Given under our hands and seals this
day of 18

B. C. (L. S.)
E. F. (L. S.)

NOTES ON EQUITY.

PRIVILEGED COMMUNICATION.—SOLICITOR AND CLIENT.—SALE OF ESTATE.

THE privilege of communications between solicitor and client is not limited to actions and suits, but extends to all matters within the scope of the ordinary duties of a solicitor. The *sale of an estate* is deemed one of such matters, as appears by the decision, on appeal, of Lord Chancellor Lyndhurst, in *Carpmael v. Powis*, just reported in the 4th part of Mr. Phillips's Reports, p. 687.^a

The Lord Chancellor.—“I am of opinion that the privilege extends to all communications between a solicitor, as such, and his client, relating to matters within the ordinary scope of a solicitor's duty. Now, it cannot be denied that it is an ordinary part of a solicitor's business to treat for the sale or purchase of estates for his clients. For some purposes his intervention is indispensable in such transactions: he is to draw the agreements, to investigate the title, to prepare the conveyance. All these things are in the common course of his business. But it is said that the *fixing of a reserved bidding* and other matters connected with the sale, are not of that character, inasmuch as they might be entrusted equally well to any one else. It is impossible, however, to split the duties in that manner without getting into inextricable confusion. I consider them all parts of one transaction—the sale of an estate: and that a transaction in which solicitors are ordinarily employed by their clients. That being the case, I consider that all com-

munications which may have taken place between the witness and his client in reference to that transaction are privileged.” The decision of the Master of the Rolls was therefore affirmed.

See *Walker v. Wildman*, 6 Madd. 47, as to the same privilege extending to communications with an intermediate agent of the client.

This decision is important, as confirming beyond all doubt the right of solicitors to act professionally,—not alone in the preparing of deeds and instruments relating to sales,—but in the preliminary negotiations, even to the settling of the supposed value of the property by a reserved bidding.

EDITIONS OF THE SMALL DEBTS ACT.

WE noticed last week Mr. Udall's edition of the Small Debts Act, and made some extracts from his notes. We find some others which will be proper to lay before our readers, who are generally desirous of reading the criticisms to which this memorable statute may be fairly subjected.^a

On the process of the court and mode of proceeding, stated in the 59th section, the following notes are made:—

“The plaint is to contain the substance of the action intended to be brought; and as by s. 75 the plaintiff cannot at the trial give evidence of any demand or cause of action, except such as is stated in the summons, the summons must set out with convenient certainty the cause of action. Clearness and precision will be what are to be attended to, without the technicalities of pleading. Although general forms will be made, these cannot embrace the multitudinous causes of action which may be the subject of litigation in the new courts. It will therefore be necessary to investigate the evidence before the plaint is entered, as the objection will often arise at the trial that it does not support the cause of action stated. What is sufficient certainty in the statement will often be mooted in the courts; for the court and the defendant should be able to discover from the plaint itself the nature of the claim. And as it will be open for the defendant to say that in fact it states no cause of action at all, there must be some test recognized to determine what is a sufficient statement of a cause of action. Perhaps it would be a convenient test of this to apply the rules applicable after verdict to pleadings in

^a This part has been delayed by the expectation of some other judgments of Lord Lyndhurst. The above case, however, was decided so late as the 25th March last. This is indeed an improvement in the “regular reporters.” This part contains the case of *Brown v. Bamford* on separate use, (which we reported on the 13th June,) and the case of the *Masters' Clerks*, reported L. O. June 6th.

^a Mr. Jagoe has also published a useful edition of the act with notes, comments, and decisions on analogous statutes. Mr. Moseley, the author of an able Treatise on Inferior Courts, has also published the first part of a Treatise on the present act.

the superior courts; for instance, those in which defective statements of causes of action are aided by intendment; and the chief baron has applied this test to proceedings by civil bill in Ireland. But, on the other hand, *an omission of that* which makes the statement a cause of action cannot be aided. There appears to be no specific enactments similar to s. 75 in the Civil Bill Statutes; but good sense would render it necessary to adopt such a rule in any system, and it has accordingly been held by Burton, J., in Ireland, in *Regan v. Northland*, in Napier's Digest, 'that if the civil bill state one specific cause of action and the evidence prove another and different cause of action, the plaintiff must fail.' In some cases in the new courts it would appear to be necessary to state with convenient certainty in the plaint the place where the cause of action arose, for the purpose of giving jurisdiction, as in the proceedings under the replevin clauses of this act; for on referring to s. 120, it will be seen that the replevin plaint is to be entered in the court of the district where the distress is made.

"It will be observed, that no provision is made as to joinder of causes of action of different kinds in the same plaint. It will probably be found convenient to allow this under certain limitations. The rules of the superior courts on this subject do not satisfy the reason sufficiently well to adopt them *in toto* in any new system. For instance, one can hardly see any satisfactory reason for the rule that a cause of action for the trespass on plaintiff's land can be joined with the beating of himself or servant, and that trespass to land should not be joined with a case for injuring a water-course. Nothing, moreover, is said in the statute as to joinder of different rights of action. As, however, it will introduce great inconvenience, and often much injustice to defendants, to join causes of action in a representative character, such as assignee, for instance, with a claim merely personal, it is presumed that the joinder of rights will not be allowed."

Regarding the provisions of the 63rd section relating to demands not being divided for the purpose of bringing two or more suits, the learned annotator observes, that—

"The plaintiff shall not divide 'any cause of action' without abandoning the excess above twenty pounds; thus, if an entire debt is due, say on a bill of exchange for forty pounds, he cannot bring an action for twenty pounds and afterwards sue for the balance. Thus far this is clear. The large majority, however, of pecuniary claims are tradesmen's accounts, consisting of a variety of items, sold at different times, for each of which there is a separate contract or cause of action. Had there been nothing further in the section, but little or no doubt could have existed but that the creditor might have proceeded in separate actions for each

item, and recovered his whole demand by successive suits in these courts. The object of the section was no doubt to prevent this being done, and to protect a debtor from a multiplicity of suits where one would suffice. Has this been effected? This appears to me to depend principally on the words I have marked in italics in the section—'any plaintiff having cause of action' 'for which a plaintiff might be entered under this act, if not for more than twenty pounds.' Does this extend the meaning of the section to any number of causes of action for which but one plaint would be necessary? Can 'cause of action' be construed to be for this purpose the same as *one demand*? for a demand may include infinite causes of action. It is certainly very far from clear that such is the meaning of the section. That part of it which enacts that the judgment shall be in full discharge of all demands in respect of such causes of action will not aid the supposed intention; it might, perhaps, have done so had the words been inverted, and it had stood thus,—that the judgment should be in full discharge of all causes of action in respect to such demand. The question simply, what is a dividing of action has received judicial interpretation in a case that arose as to the jurisdiction of the county court. *The King v. The Sheriff of Herefordshire*, 1 B. & Ad. 672. The application was for a writ to prohibit the sheriff from proceeding in two suits in his county court at the suit of the same plaintiff against the same defendant, and it appeared that the facts were these:—

"A. became indebted to B. in a sum not exceeding forty shillings, for the carriage of a parcel of goods, and in a month afterwards incurred another debt to B. not exceeding forty shillings, for the carriage of a second parcel. A. brought two actions in the county court for the respective debts:—Held, that the causes of action were distinct, and that A. was entitled to sue separately for each demand, and the court of King's Bench refused a prohibition.' In that case, Lord Tenterden, giving judgment, said this was not a splitting of actions; 'to be so the cause of action must be one and entire: in these cases the two items are perfectly distinct debts, the one having no connexion with the other;' and he added, that the plaintiff might have sued for one before the other was due; and that as he had a remedy for the first debt, so he must have one for the second. The Irish statute for giving the civil bill jurisdiction to the assistant barristers' court, 36 Geo. III. c. 25, s. 8, has the following provision:—'That no cause of action still subsisting, and in the whole amounting to a sum beyond such sum as is made, according to the nature of the case, recoverable by force of this act, shall be split or divided, so as to make the ground of two or more different actions, in order to bring such cases within the jurisdiction created by this act.' The words 'no cause of action still subsisting and in the whole amounting to a sum,' &c., would, at the first

view, lead to an inference that the legislature intended to make it apply to all causes of action existing at the time of the commencement of the suit; but the contrary has been held,—as, where A. lent B. a sum of money, and some time afterwards another sum:—Held, that A. might sue for them separately. See the cases collected in Napier's Digest Civ. Bill. The rule appears to have been settled by the decision of Bushe, C. J., in the case of *Hamblin v. Hamblin*, reported in Mr. Napier's Digest. When that case came on for appeal, the learned chief justice was inclined to consider it a splitting of a cause of action; but during the argument the above case of *The King v. the Sheriff of Herefordshire* was cited, and after taking time to consider, he, as is stated, *on the authority of that case being so much in point*, held, that he had no further difficulty in deciding that it was within the jurisdiction of the civil court. It would, however, have been more satisfactory had the determination proceeded upon the words of the statute itself, rather than upon the English case, which determined simply what was a splitting a cause of action. One would be almost inclined to doubt the above being the only reason given, if it were not reported by a gentleman of the acknowledged learning and accuracy of Mr. Napier. The Westminster Court of Request Act, 6 & 7 Will. IV. c. 137, s. 42, has terms very much more special and defined; it is, 'That nothing herein contained shall extend or be construed to extend so as to enable any plaintiff to split or divide any cause of action for the recovery of any debt or demand, where the whole sum that shall appear to be due and owing shall amount to more than five pounds, in order that the same may be made the ground of two or more actions, causes, or matters in controversy, for the purpose of bringing such actions, causes, or matters within the jurisdiction of the said court.'

The 65th section, on cases of Partnership and Intestacy, Mr. Udall observes, —

"Opens very large questions to be decided in this court. The partnership account may be well referred to arbitration. The 20l. balance of a distributive share of an intestate's estate may open the widest possible investigation that can be litigated in a court of justice, it being by no means uncommon to have twenty claimants as next of kin, and they may be claimants who come for the balance of a large estate. In the assistant barristers' courts in Ireland, next of kin and others may litigate their claims, but there the jurisdiction is limited to estates under 200l. With respect to the claim as to legacies there is much less difficulty. There never existed, as it appeared to me, any valid objection against proceeding for a legacy in the common law courts. There is, indeed, some difficulty in proving the amount of claim in the case of a residuary legatee, but a specific legacy should

always have been allowed to be claimed as a debt where there are assets. The words in the section are large enough to apply to all kinds of legacies; the words are *any legacy*; therefore this would include a legacy charged upon a particular fund, or charged on land or otherwise. It is presumed courts of equity would interfere by injunction to stop the proceeding, if injustice were likely to arise from the cause going on in the new county courts."

On the hearing of defended causes under the 74th section our author notices, that

"The only formal pleading in the cause is to be the plaint; this is to contain the substance of the action brought, and on defendant appearing he is required to answer such plaint—in what way, either orally or in writing, does not appear. The judge is then to proceed in a summary way to try the cause and give judgment, without further pleading or formal joinder of issue. Literally this can only apply to cases where the defendant makes a general denial of liability; for where the answer is in confession and avoidance, there must, for the sake of convenience, be some counter statement made by the plaintiff at once, that it may be discovered in what the real difference between the party consists. Take the common defence of payment; of course, this put as a defence alone admits of the contracting of the debt, which is then no longer to be contested. But before the case can be gone into the plaintiff must say whether he admits or denies the payment. It is evident that there must be preliminary statements and counter statements, although not in form, yet in substance similar to the old oral pleadings: for before the judge can hope to consider the merits of the question, he must discover what it is that is litigated. He must ascertain whether it arises on disputed facts or disputed law, or both. This preliminary investigation will of course be the more necessary in those cases where a jury has been required. For a defence might be set up, or a statement made in the nature of a replication to a defence set up, that was not expected, and for which one or both the parties would not be prepared with evidence to have them investigated. Under these circumstances, the judge would probably hold that he could grant time to the parties, under s. 81, to appear at a future court, to have the question then investigated. But this could not be done without consent of the parties, if the jury are charged with the cause, for the cause must then be considered at issue, to be disposed of by their verdict. It is presumed that the general rules of practice to be framed under s. 78 will prescribe the mode of proceeding generally. It is, however, evident that much must be left to the discretion of the judge.

"The judge shall proceed in a summary way to try the cause and give judgment. Does this apply to cases where a jury is summoned? By reference to sect. 73, it will be seen that the jury are to be impannelled, and sworn to

give their verdicts in the cases brought before them. In fact, that the cause is to be tried, as by a jury at common law. Correctly speaking, this is trying a cause by the court and jury. The term *summary* may hardly seem applicable to trial by such a tribunal. I find that the term was used in the first act as to the civil bill jurisdiction in Ireland, 2 Anne, c. 18, by which the judges of assize were to determine matters between party and party, to the extent of 10*l.*, in a summary way; but there was no intervention of a jury at all. So again in 2 Geo. I. c. 11, the judge of assize was to try in a summary way. This act authorized him if he pleased to call upon the proper officer to return a jury instantly to try any doubtful facts; but as this appears to have been entirely at the discretion of the judge, and for the purpose of assisting him, it in no way interfered with his proceeding in a summary way if he pleased to do so. It was like a collateral question that came in issue, such as the interest of a witness in which the judge might take the opinion of a jury on disputed facts. By this act, however, the jury is given to a party as a right, and they may give either a general or a special verdict, and may determine all the questions in controversy."

RESULT OF THE MICHAELMAS TERM EXAMINATION.

THE printed list of attorneys to be admitted each term, rarely less than 150, and frequently nearly 200, may naturally lead to the supposition that the annual increase in the general body is 600 or 700; but as none can be admitted who are not examined, the true index to the actual increase must depend on the number of candidates *passed*. Thus the printed list of this term exhibited 170 names. Many of these had been previously examined, and 146 candidates were entitled to be examined, but 117 only left their testimonials. In consequence of defective evidence of service, one of them was refused to be examined, and another failed to attend at the time appointed. The number was, therefore, reduced to 115, and Michaelmas Term is always the most numerously attended.

The day of examination and the two following days, were occupied in considering the papers. Nine were postponed to a future term, 100 were passed absolutely; and six conditionally on producing further testimonials.

Many of these will depart for brighter prospects in the colonies, and some will continue as clerks in the profession. The actual additions will not much more than supply the reductions of death and misfortune.

LIVERPOOL LAW ASSOCIATION.

REPORT OF THE COMMITTEE FOR THE YEAR ENDING 3RD NOVEMBER, 1846.

YOUR committee, in presenting their Annual Report to the Society, have much pleasure in adverting to the increase in the number of members, seven having been elected since the last annual meeting. At the same time it is proper to observe, that in the past year five members have ceased to be such, under Rule 8 (applicable to defaulters); but this deduction properly belongs to former years, during which the rule should have been enforced against the same parties, they having discontinued the payment of their subscriptions for a considerable time past. Besides the seven new members, two additional "country subscribers" have been elected under the late rule in favour of attorneys practising not less than six miles from Liverpool.

The total number of members of the society at the present time, exclusive of the country subscribers, is ninety, which is greater than at any former period; and while your committee feel satisfied that the utility of the institution is every year becoming more highly appreciated by the profession, they would urge the desirableness of endeavours being continued to procure a further increase of the members.

In consequence of the large accession of members during this and the two preceding years, the funds of the society are in a prosperous state; and your committee have thereby been enabled to add to the library a considerable number of new works, or new editions of former works, and generally to improve the library.

The most prominent of the duties which devolve on the committee are usually in connexion with the measures of the legislature; and your committee have to congratulate the society that during the last session of parliament no measure to which they had any objections was persevered in, except the Small Debts' Bill. Soon after the introduction of this bill a special general meeting of the society was convened to take it into consideration—the particular clauses underwent considerable discussion, and the modifications which seemed necessary to the society were communicated to the Town Clerk of Liverpool, and to the committee of the Provincial Law Societies' Association, with each of whom also, deputations from this society had interviews on the subject; but as several of the clauses were to some extent subsequently modified, and as the remaining objections to the bill were efficiently brought under the notice of the promoters without success, and as moreover the Borough Court of Liverpool was altogether unaffected by the bill, it was thought unadvisable for this society to persist in an opposition.

The provision in the bill *confining to barristers, the class of persons out of which the*

judges are to be selected, was deemed by your committee, and by the society at large, and also by several members of parliament, exceedingly unfair to the attorneys; but experience has shown that the latter may expect encroachments to be made on the business and public appointments which they have been accustomed and are competent to discharge, while there are no legal men in the House of Commons, nor any efficient portion of the public press willing to support their fair claims. To improve the future position of the attorneys in this respect, the anxious attention of your committee, in conjunction with the various law societies in the kingdom, through the medium of the Provincial Law Societies' Association, is now directed; and a sub-committee appointed to mature the specific course to be taken, is proceeding in earnest to discharge its duty.

Your committee cannot forbear contrasting with many of the professedly reformatory acts passed in recent sessions, the excellent acts of last session. For abolishing the exclusive privileges of serjeants at law in the Court of Common Pleas. For compensating the families of persons killed by accident, and, For abolishing Deodands.

The experience of the past year has fully convinced your committee of the great advantages resulting to the profession from the establishment of the Provincial Law Societies' Association. It is hardly necessary to point out the great facilities which are afforded of ascertaining through its machinery, the general sentiments of the profession on all legislative measures and other subjects (including disputed points of practice): and the consequent unity of purpose in the proceedings of the different law societies, and consistency in the practice of the members of the profession which are obtained. Deputations from this society have attended most of the meetings at Manchester of the association and the committee.

In the Law List for 1846, and also in the last Liverpool Directory, your committee have procured the publishers to denote the members of this society by a distinctive mark, and arrangements have been made for the continuance of this course in future years.

Your committee regard the formation of a Junior Law Society which has just taken place in Liverpool, consisting principally of articled clerks, as calculated to promote the legal knowledge of its members, and the respectability of the rising generation of attorneys in the town; and with this view your committee have had much pleasure, under the society's sanction, in acceding to a request made by the junior society for permission to use the library for the purpose of their meetings on two evenings in each month.

The members of the committee who now retire in rotation are Messrs. Falcon, Hore, Fisher, Avison, and Payne.

In concluding their report your committee cannot avoid noticing, and with much regret,

how little assistance is rendered in the various deliberations and proceedings of the society, by many members whose assistance would be most valuable from the learning and experience which they possess; and your committee hope that it is only necessary to mention the subject, in order to secure in future that general and vigorous co-operation on which the efficiency of the institution so much depends.

ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

Criminal Law.

ACCESSORIES.

See *Murder*, 2.

ARSON.

Indictment.—*A.* was indicted, on the stat. 1 Vict. c. 89, s. 3, for the capital offence of setting fire to *B.*'s dwelling house, *B.* being therein. *A.* had set fire to an outhouse under the same roof as the dwelling house, and the fire communicated to the dwelling house, and burnt it. At the time that *A.* set fire to the outhouse *B.* was in the dwelling house, but had left it before the fire reached the dwelling house: *Held*, that the capital charge could not be sustained, as *B.* was not in the house at the time it was on fire, and that the prisoner could not be convicted of the transportable offence under section 3 of that statute, as the indictment did not charge the offence to have been committed with intent to defraud or injure any one. *Reg. v. Fletcher*, 2 C. & K. 215.

ATTORNEY.

See *Forgery*, 4.

ASSAULT.

See *Robbery*, 1.

BIGAMY.

Chapel.—*Evidence*.—In a case of bigamy, where the first marriage was solemnized in a chapel, it is necessary to show either that the chapel was one in which banns had been usually published before the stat. 26 G. 3, c. 33, or that the chapel was built and consecrated after that act, and before the stat. 6 G. 4, c. 92; and proof that marriages have been solemnized there for the last twenty years is not sufficient for this purpose. *Reg. v. Bowen*, 2 C. & K. 227.

CONFESSION.

Inducement.—A married woman was apprehended on a charge of felony, and her husband, in the presence of the constable, held out an inducement to her to confess. She then made a statement: *Held*, that this was not receivable in evidence, as an inducement held out in the presence of the constable was the same in effect as if it had been held out by him. Where stolen goods are found in a man's house, and his wife in his presence makes a statement exonerating him and criminating herself; *semble*, that, with respect to the admis-

sibility of this statement in evidence against her, it may be a question whether the doctrine of presumed coercion does not apply. *Reg. v. Laugher*, 2 C. & K. 225.

Case cited in the judgment: *Rex v. Court*, 7 C. & P. 486.

And see *Evidence*, 1; *Depositions*.

CRIMINAL INFORMATION.

Spoken words, charging a magistrate with corrupt and oppressive conduct, are not the subject of criminal information unless they are spoken at a time when he is in the actual execution of his office. *Duke of Marlborough, ex parte*, 1 D. & M. 720.

DEPOSITIONS.

What an accused person said before the magistrate.—Everything that occurs before a magistrate on the examination of a person on a charge of felony should be taken down in the depositions, if it is material to the case.

Where, during the examination of a witness before a magistrate in support of a charge of felony, the prisoner interposes an observation which is material to the case, such observation should be taken down in the depositions; and if it be not, the judge at the trial will not allow any evidence of it to be given. *Reg. v. Weller*, 2 C. & K. 223.

See *Felony*.

DESTRUCTIVE MATTER.

Stat. 1 Vict. c. 15.—Boiling water is a "destructive matter," within the 5th section of the *stat. 1 Vict. c. 85*.

A woman poured boiling water over the face and into the ear of her husband while he was asleep, whereby he was temporarily blind and permanently deaf on one side: *Held*, that she might be convicted of felony under the *stat. 1 Vict. c. 85, s. 5*. *Reg. v. Crawford*, 2 C. & K. 129.

EMBEZZLEMENT.

Paid officer in a poor law union.—Under an order of the poor law commissioners, founded on the 46th section of the *stat. 4 & 5 W. 4, c. 76*, the board of guardians of the P. Union appointed A. an assistant overseer of a district in the union of which the township of F. formed a part, and his duty was to assist the overseers of each of the townships of the district. A. was paid a salary by the guardians. A. received sums for the poor-rate from rate-payers of the township of F., which he ought to have paid over to the bankers of the overseers of that township, instead of which he embezzled them: *Held*, that A. was not indictable for embezzling this money as the money of the overseers, as he was not their servant; and that he was not indictable for this embezzlement as the servant of the guardians, because, (if he was their servant,) it was not their money. *Reg. v. Townsend*, 2 C. & K. 168.

EVIDENCE.

1. *Prisoner's statement.*—A. was indicted for stealing a shilling which had been previously

marked and put into a till. A constable found the shilling in his possession, and asked him if he had any more money of Mr. S.'s about him. The prisoner produced some half-crowns, and then made a statement: *Held*, that this statement was not receivable in evidence, on the ground that it related to another and distinct felony. *Reg. v. Butler*, 2 C. & K. 221.

2. *Declarations of child.*—*Postponing trial.*—In a case of an offence against a child under ten years old, it appeared, on an application on the part of the prosecution to postpone the trial, that the girl was only six years old, and by reason of her age quite incompetent to take an oath: *Held*, that the trial ought not to be postponed in order that the child might be instructed as to the nature of an oath, but that there might be cases of children of more matured intellect, e. g., of ten or twelve years old, who might be, from neglected education incapable of being sworn, in which such a postponement might be proper. Where, in such a case, the child, from her tender age, was incompetent to be sworn, the judge would not receive evidence of what the child stated to her mother shortly after the alleged offence took place, nor allow the mother to prove that the child mentioned to her the name of any particular person. *Reg. v. Nicholas*, 2 C. & K. 246.

And see *Bigamy*; *Forgery*, 3.

FALSE ANSWER.

Polling for town councillor.—*Indictment.*—

An indictment on the Municipal Corporation Act, 5 & 6 W. 4, c. 76, s. 34, for giving a false answer on voting for a town councillor, is bad, if it do not allege that the defendant "wilfully" gave the false answer. Charging that he gave the answer "falsely and fraudulently," is not sufficient.

A count in the indictment, which charges that the defendant, at an election of a town councillor, falsely, fraudulently, deceitfully, and in fraud of the provisions of the *stat. 5 & 6 W. 4, c. 76*, did personate J. H., whose name was on the Burgess-roll, and gave a vote in the name of J. H. at such election, is bad, because it charges no offence either against the common law or against the *stat. 5 & 6 W. 4, c. 76*. *Reg. v. Bent*, 2 C. & K. 179.

Cases cited in the judgment: *Mellor's case*, 27 Eliz.; *Anon*, Mich. 29 and 30 Eliz.; *Rex v. Davis*, 2 Leach, 556; *Cox's case*, 1 Leach, 82.

FELONY.

Practice.—*Depositions.*—In a case of felony the committing magistrate is not bound to bind over all the witnesses who have been examined before him in support of the charge, but only those whose evidence is material to the charge; but it is very desirable that all that has been given in evidence before the magistrate should be transmitted to the judge.

If a person in whose possession stolen property is found give a reasonable account of how he came by it, and refer to some known person as the person from whom he received

it, the examining magistrate should have that person before him, as his evidence may either entirely exonerate the accused, or may prove that, in addition to his possession of the goods, the accused has been giving a false account of how he came by them. *Reg. v. Smith*, 2 C. & K. 207.

Case cited in the judgment: *Reg. v. Crowhurst*, 1 C. & K. 370.

FOREIGNER.

See *Murder*, 1.

FORGERY.

1. *Indorsement.—Joint executrices.*—A bill of exchange was payable to Mrs. E. J., widow, M. J., spinster, A. M. J., spinster, and A. M., the wife of E. B., Esq., or order, the executrices of the late J. J., Esq. A. was indicted for forging "a certain indorsement of the said bill of exchange, which last indorsement is as follows, that is to say, 'A. M. J.'." It was objected that the bill was only negotiable on the indorsement of all the payees, and therefore, that this was not a forged indorsement of the bill. The prisoner was convicted, and the judges held the conviction right. *Regina v. Winterbottom*, 2 C. & K. 37.

Case cited by the court: *Bollard's Case*, 2 Ea. P. C. 958.

2. *Warrant and order.—Deposit account.*—An indictment for forging "a certain warrant and order for the payment of money" is not supported by proof of the forgery of an instrument which is a warrant for the payment of money, but which is not an order.

A. kept a deposit account, but not a drawing account, with B., a banker, and A. was not entitled to draw cheques on B. C. presented a forged cheque of A. on B., which B. paid: *Held*, that this cheque was a forged warrant for the payment of money, but not a forged order, as A. had, by the course of dealing between him and B., no right to draw cheques on B. *Reg. v. Williams*, 2 C. & K. 51.

3. *Principal-evidence.*—If A., by letter, desire B., an innocent agent, to write the name of "W. S." to a receipt on a post office order, and the innocent agent do it, believing that he is authorized so to do, A. is a principal in this forgery, and it makes no difference that by the letter A. says to B. that he is "at liberty" to sign the name of W. S., and does not in express words direct him to do so.

But if A., before the date of the letter sent to B., received by post a letter of an earlier date purporting to come from W. S., and bearing post marks of earlier date, from which it may be inferred that he was authorized to make use of the name of W. S., the counsel of A., on his trial for the forgery, is entitled to state the contents of that letter, and to give it in evidence, with a view of showing that A. *bonâ fide* believed that he had the authority of W. S. for directing B. to sign the name of W. S. to the receipt. *Reg. v. Clifford*, 2 C. & K. 202.

4. *Privilege.—Document in the hands of an attorney.*—H., who was tried for forging the

will of J. S., had sent the forged will to his attorney, Mr. M., with some deeds of J. S., ostensibly for the purpose of asking his advice, but really that he might find the will and act on it. It was afterwards produced by Mr. M. before the magistrates, when H. was charged before them with forging it. At the trial of H. for the forgery, Mr. M. was called to produce the will, which he did without any objection being taken. The officer of the court was proceeding to read it, when the prisoner's counsel objected to the reading of it, as being privileged in the hands of Mr. M. The judge directed it to be read in evidence, and the fifteen judges held that it was properly so read, it not having been put into the hands of Mr. M. in professional confidence, even if that would have made a difference. *Reg. v. Hayward*, 2 C. & K. 234.

INDICTMENT.

See *Arson*; *False Answer*; *Larceny*, 3; *Murder*, 1, 2.

LARCENY.

1. *Receipt Stamp.*—A., assisted by B., had done work for the father of C., and C. told A. and B. that if they would bring a stamped receipt they should be paid. B. bought a stamp with the money of A., and they together went to C., and the blank stamp was given to C. to write a receipt on it. C. did so; and as the stamp lay on C.'s desk, A. signed the receipt and B. witnessed it, but neither of them ever had the stamp in his possession after the receipt was written on it. C., under pretence of fetching his father's cheque book, took away the receipt, and would not pay the money it was given for: *Held*, not a larceny of the stamp. *Reg. v. Frampton*, 2 C. & K. 47.

2. *Servant.*—Servants who clandestinely take their master's oats with intent to give them to their master's horses, and without any intent to apply them to their own private benefit, are guilty of larceny, though they are not answerable at all for the condition of the horses. *Reg. v. Privett*, 2 C. & K. 114.

3. *High seas.—Indictment.*—In an indictment preferred at the assizes for a felony committed on the high seas, it is sufficient to allege that the offence was committed "on the high seas," without also averring that the offence was committed within the jurisdiction of the admiralty. *Reg. v. Jones*, 2 C. & K. 165.

4. *Lucrî causa.*—A., who had been the servant of Mrs. G., applied for a service to Mrs. D., who consented to engage A. as her servant, if, to a letter written by Mrs. D. to Mrs. G., a satisfactory answer was returned as to the character of A. Mrs. D. accordingly wrote a letter to Mrs. G., and posted it, and A., wishing to intercept the letter, went to the R. post office, and obtained the letter by stating that she was a servant of Mrs. G., and then burnt it: *Held*, by the fifteen judges, that this was a larceny. *Reg. v. Jones*, 2 C. & K. 236.

And see *Robbery*, 2.

MANSLAUGHTER.

Negligence.—Principal in the second degree.—If each of two persons be driving a cart at a dangerous and furious rate, and they be inciting each other to drive at a dangerous and furious rate along a turnpike road, and one of the carts run over a man and kill him, each of the two persons is guilty of manslaughter, and it is no ground of defence that the death was partly caused by the negligence of the deceased himself, or that he was either deaf or drunk at the time.

Generally, it may be laid down, that, where one by his negligence has contributed to the death of another, he is guilty of manslaughter. *Reg. v. Swindall*, 2 C. & K. 230.

MURDER.

1. *Foreignship.—Indictment.—Witness.*—An indictment preferred at the assizes, under the stat. 7 & 8 Vict. c. 2, for a crime committed on the high seas, need not conclude *contra formam statuti*.

A negro, who was called as a witness, stated, before he was sworn, that he was a christian and had been baptized: *Held*, that he ought to be sworn, and no further question could be asked of him before he was so.

On the trial of Brazilians for the murder of *P.*, it appeared that a British cruiser engaged in the prevention of the slave trade manned two boats, and sent them, commanded by a lieutenant, to board the Brazilian ship *F.* He did so, and, finding her fitted up for slaves, but with no slaves on board, took her. After this, the lieutenant in the ship *F.* chased the ship *E.*, also Brazilian, and sent a boat with *P.*, who was a midshipman, to board her. She had slaves on board, and was captured, and part of her crew put on board the *F.*, and left there with the captain and cook of the *F.*, as prisoners, in charge of *P.* and some British seamen. Neither the boats nor the *E.* after she was taken, had any instructions on board, but the cruiser had. Such of the crew of the *E.* as were thus put on board the *F.*, and the cook of the *F.*, all Brazilians, rose on *P.* and the British seamen and killed them all; but the captain of the *F.* would not join in the transaction. It was contended for the prosecution, that the *F.* and *E.* were legally taken, under the stats. 5 G. 3, c. 113, and 7 & 8 G. 4, c. 74, and the Portuguese and Brazilian treaties as to slave trading; and that the prisoners were in lawful custody, and the ship *F.* in the lawful custody of the Queen's officers. The prisoners were convicted of the murder, but the 15 judges held the conviction wrong, on the ground of want of jurisdiction in an English court to try an offence committed on board the *F.*; and that, if the lawful possession of that vessel by the British crown, through its officers, would be sufficient to give jurisdiction, there was no evidence brought before the court at the trial to show that the possession was lawful. *Reg. v. Serva*, 2 C. & K. 53.

2. *Accessories.—Indictment.—Cause of death.*—An indictment for murder charged *A.* with giving a mortal wound to *B. G.*, on the 27th

of May, of which wound *B. G.* died on the 29th of May; and that *Y.* and *Z.*, "on the day and year first aforesaid, were present, aiding and abetting *A.* the felony aforesaid to do and commit." The jury found all the prisoners guilty of manslaughter; and it was objected for *Y.* and *Z.*, that the felony of *A.* was not complete till the death of *B. G.*, but the judges held the conviction right.

In one count of an indictment for murder, the death was stated to be by a blow of a stick, and in another by the throwing of a stone. The jury found the prisoners guilty of manslaughter generally on both counts, and the judges held the conviction right, and that judgment could be given upon it; and, *semble*, that these are not inconsistent statements of the modes of death, but that, if they had been so, no judgment could have been given on this verdict. *Reg. v. O'Brien*, 2 C. & K. 115.

3. *Cause of death-wound.*—An indictment for murder charged that the death of the deceased was caused by a mortal wound of the head, inflicted with a swingle. It was proved that the death was caused by a blow on the head by a piece of wood, and that the external skin was not broken, but that there was extravasation of blood pressing on the brain, and a collection of blood between the scalp and the brain. The surgeon stated this to be a contused wound, with effusion of blood: *Held*, by the fifteen judges, that the evidence supported the indictment. *Reg. v. Warman*, 2 C. & K. 195.

Cases cited: *Reg. v. Smith*, 8 C. & P. 173.

ROBBERY.

1. *Assault.*—An indictment for robbery charged that *A.* and *B.* together assaulted *C.*, and robbed him of his watch. At the trial *C.* did not appear, and there was no evidence of the felony; but a witness saw *C.* on the ground on the night in question, and several persons around him abusing him, and this witness saw *A.* strike *C.* The jury convicted *A.* of an assault, but said they were not satisfied that *A.* had any intent to rob *C.* The 15 judges held the conviction right, and held that the 11th section of the stat. 1 Vict. c. 85, applies whenever the indictment charges an assault, and the jury negating the felony, find guilty of the assault; provided always, that the finding be in respect of that very same act which the crown seeks to make felonious; identity being the question, and not the intention of the prisoner to commit a felony. *Reg. v. Birch*, 2 C. & K. 193.

2. *Larceny from the person.*—*A.* asked *B.* what o'clock it was, and *B.* took out his watch to tell him, holding his watch loosely in both hands. *A.* caught hold of the ribbon and key attached to the watch, and snatched it from *B.*, and made off with it: *Held*, no robbery, but a stealing from the person. *Reg. v. Walls*, 2 C. & K. 214.

SERVANT.

See *Larceny*, 2.

TRIAL.

See *Evidence*, 2.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Heming v. Swinnerton. Michaelmas Term, 1846.

AWARD UNDER ARBITRATION STATUTE.—JURISDICTION OF A COURT OF EQUITY.

Demurrer allowed to a bill praying to set aside an award (not alleged to have been corruptly or unduly obtained) made pursuant to 9 & 10 Will. 3, c. 15.

The Court of Chancery is a court of record, within the meaning of the above act; and is thus ousted of any jurisdiction foreign to the enactments of that statute.

THIS was an appeal from a decision of the Vice-Chancellor of England, overruling a demurrer to the plaintiff's bill, which had been filed for the purpose of setting aside an award made pursuant to 9 & 10 Will. 3, c. 15, and praying an injunction to stay proceedings under it.

Mr. James Parker and Mr. Daniel appeared for the defendant, and

Mr. Rolt and Mr. Wright for the plaintiff.

The points in dispute are mentioned in the judgment.

The Lord Chancellor. The bill raises two questions.—First, whether the case comes within the 9 & 10 Will. 3, c. 15; secondly, whether a court of equity has jurisdiction to grant the injunction. The grounds of the Vice-Chancellor's decision could not be collected from the imperfect note of it which had been supplied. If it proceeded on the assumption that the order of reference had not been made an order of that court, such reference was not necessary. *Davis v. Getty*, 1 Sim. & St. 411; *Dawson v. Sadler*, ibid, 537; *Nichols v. Roe*, 3 Myl. & K. 431. In the latter case Lord Brougham had reversed the judgment of the present Vice-Chancellor of England in the same case, 5 Sim. 156. The court would not now re-open a question sanctioned by such authority and prevailing for such a length of time. It had been stated in argument, that the Court of Chancery was not a court of record within the statute. Lord Eldon had decided that it was. Vide note, *In the matter of Joseph and James Webster*, 1 Russ. & Myl. 498; *Pownall v. King*, 6 Ves. 10. It had also been urged, that even if the court be within the statute, it may exercise its ordinary jurisdiction, and entertain a bill praying relief from an award. But the act provided a summary course of proceeding after an award should have been made, and thus ousted any jurisdiction foreign to that directed by the statute. As it was clear that the Court of Chancery was such a court of record, the plaintiff ought to have applied for his remedy in the manner directed by the statute. The demurrer must therefore be allowed with costs.

Rolls Court.

Re Nias. Nov. 12, 1846.

FOUR DAY ORDER.—AFFIDAVIT.

An affidavit in support of a motion for the four day order to enforce payment of a sum, ordered by a previous order to be paid, must state that there has been no payment up to the day when the motion is made.

IN this case an order had been obtained before the vacation for payment of a balance found due on taxation within ten days after service. Of this order, service at the office of the person against whom it was made had been subsequently substituted for personal service.

Mr. Kindersley now moved for an order to pay within four days after service; service being substituted as before. The motion was intended to have been made on the 2nd, and was supported by an affidavit, that up to that time there had been no payment under the former order. But the Master of the Rolls refused to make the order without an affidavit that the money had not been paid up to the day when the motion was made.

Lancashire v. Lancashire. Nov. 12, 1846.

INTERROGATORIES.—COMMISSIONER.—104TH ORDER OF 1845.

The commissioners under the 104th Order of 1845, may examine a witness previously examined on a fresh interrogatory, without any order for that purpose, and ought to continue his sitting so as to facilitate the exhibition of such interrogatories if required.

THIS was a motion for leave to exhibit a fresh interrogatory before the commissioner for the purpose of proving a codicil to a will by a witness who had been previously examined to prove the will. In the course of the discussion, however, it was admitted, and Lord Langdale expressed his concurrence in the opinion, that, under the oath contained in Order 104 of May, 1845, fresh interrogatories could be exhibited for the examination of witnesses previously examined at any time during the continuance of the commission; the old practice of requiring an order of the court before a witness was allowed to be examined upon a fresh interrogatory before the commissioners, having arisen from the former oath requiring him to examine the witnesses on the interrogatories "now produced;" whereas, in the oath, as at present framed, the word "now" is omitted. So that the practice upon a commission is assimilated to the old practice before the examiner. The difficulty in the present case was, that there was no interrogatory properly adapted to prove the codicil, but only one adapted to prove the will, and the commissioner refused to allow the witness, after he had been examined upon this interrogatory to prove the will, to be examined upon it again to prove the codicil.

Mr. Kindersley and Mr. Bazalgette for the motion.

Mr. Turner and Mr. Webster contra.

Lord Langdale expressed his opinion that the commissioner ought to have continued sitting until a proper interrogatory could be procured, which he had no doubt as to his right to receive; and therefore, notwithstanding the original error on the side of the parties making the application, made the costs costs in the cause.

Vice-Chancellor of England.

Bugnall v. Whitehouse. Nov. 12, 1846.

PAYMENT OF MONEY INTO COURT.

Application may be made for payment into court of a sum of money ascertained, pursuant to an order of the court, to be the amount of damages, although the certificate of such damage was only intended to be used as evidence in the cause.

THIS was a motion for payment into court of a sum of 604*l.*, under the following circumstances:—The plaintiff having instituted a suit to prevent the defendants from working under his mine, obtained an injunction for that purpose, which the defendants moved to dissolve, and on the hearing of the latter motion, an order was made by which two persons were named as valuers, to ascertain the quantity and value of the coal that had been taken by the defendants from under the plaintiff's mine, and that such valuers should make their certificate, which should be evidence in the cause, each party having liberty to apply to the court as he should be advised. The valuers having made their certificate, by which they certified the value of the coal so abstracted to be 604*l.*, a motion was now made on the part of the plaintiff that the defendants should pay that sum into court.

Mr. Bethell and Mr. Daniel, for the motion, contended, that as the sum sought to be brought into court was for ascertained damage, it was a matter of course that the order should be made.

Mr. James Parker, contra, said that the certificate of the valuers was merely intended to be used as evidence in the cause, and the court ought not, therefore, before answer, to order money to be brought into court in respect of which there was no admission on the part of the defendant.

The Vice-Chancellor said, that the order might not have expressed what the parties meant; but it contained the words that the parties should be at liberty to apply to the court as they should be advised. It could not have been intended that when the amount of the damage was ascertained, the defendant should keep it in his pocket. This was a fair subject about which to apply to the court, and the order must be made.

Queen's Bench.

(Before the Four Judges.)

Hopkins v. Richardson. Michaelmas Term, 1846.

INDEBITATUS ASSUMPSIT.—WORK AND LABOUR.—SPECIAL AGREEMENT.

A. is let into the possession of a house belonging to B., under a parol agreement, that if A. will lay out a sum of money in repairs, B. will grant him a lease of the house for twelve years. A. completes the repairs, and B. then refuses to grant the lease.

Held, that there was not evidence to show that the agreement was rescinded, nor that the work was done at the request and for the benefit of the defendant, so as to support an action of *indebitatus assumpsit* for work and labour; and the court set aside a verdict which had been found for the plaintiff, and granted a new trial.

THIS was an action of *indebitatus assumpsit*, for work and labour, tried before Mr. Justice Coleridge, when a verdict was found for the plaintiff for the sum of 39*l.* It appeared from the evidence in the cause that the plaintiff had taken a house of the defendant under a parol agreement, that if the plaintiff would do certain repairs to the house, the defendant would grant him a lease of it for twelve years. The repairs were executed by the plaintiff, the house was placed in a condition calculated to produce an improved rent, but the defendant, when requested, refused to grant a lease of the premises. It appeared also that the plaintiff was let into possession of the premises after the agreement was entered into. The learned judge told the jury, that if they were satisfied that the defendant would not perform his contract, or that there were circumstances under which they could say that the contract was rescinded, that the plaintiff would be entitled to recover the sum he had laid out in the repair of the house.

A rule *nisi* having been obtained for a new trial, on the ground of misdirection,

Mr. Humphrey now showed cause. The cases of *Gray v. Hill*,^a and *Phillips v. Jones*,^b are strong authorities in support of the general proposition, that if the plaintiff performs work for the defendant on a specific agreement, and the defendant afterwards refuses to perform his part of the agreement, that the plaintiff is then able to sue in *indebitatus assumpsit* for the value of the work done. Unless the plaintiff can sue in this form of action, he is without remedy. The contract not being in writing, and being made in respect of an interest in land, is void under the Statute of Frauds; he is deprived of his remedy on the agreement either at law or in equity. [*Wightman, J.*, the plaintiff still continues in possession of the premises, and the possession is part of the consideration for the agreement.] The plaintiff may be ejected to-morrow, and has no defence either to

^a 1 Ryan & Moody, 420.

^b Adol. & Ellis, 333.

an action of ejectment, or an action for use and occupation for the improved rent. The direction, therefore, of the learned judge was quite correct.

Mr. M. D. Hill was not heard in support of the rule.

Lord Denman, C. J. The plaintiff can only recover in *indebitatus assumpsit* for work and labour on the supposition that the contract has been rescinded. The plaintiff has been let into possession of the house and still continues to occupy it, and the work has been done for the improvement of the house, and under those circumstances, it is impossible to say that there has been any rescission of the contract.

Coleridge, J. I seem to have been led into an error in telling the jury that a refusal to perform the contract on the part of the defendant is to be placed on the same footing as if the contract had been mutually rescinded. The evidence is, that there has been no rescission of the contract, and I believe I ought to have told the jury that if they believed the evidence, they must find a verdict for the defendant.

Wightman, J. I am of the same opinion. The plaintiff was let into possession of the premises on a special agreement, that if certain work was done, he was to have a lease granted him. The work is done, and the defendant afterwards refuses to grant a lease, upon which the plaintiff brings his action of *indebitatus assumpsit*. In order to support this action there must be a rescission of the agreement, and on test that the agreement has been rescinded is, that the parties are to be placed in the same situation as they were before it was entered into. In this respect I think the case for the plaintiff fails, for he not only has had, but still continues in the possession of the premises. He also fails to show that the work was done at the request and for the benefit of the defendant, because, as far as the evidence goes, the plaintiff seems to have had all the benefit of the repairs that have been done.

Erle, J. There appears to me no evidence to go to the jury that the work was done at the request and for the benefit of the defendant. For anything that appears, the plaintiff may have had the entire benefit of the work that has been done.

Rule absolute.

Queen's Bench Practice Court.

Roberts v. Foulkes. Nov. 7, 1846.

TRIAL—STAY OF PROCEEDINGS, WHEN TOO LATE.

A cause was tried before the under-sheriff during the long vacation, and a verdict found for the plaintiff; a judge's order was then obtained by the defendant to stay all further proceedings until the fifth day of the next term: Held, that a motion made on the fifth day of term for a new trial was too late.

C. Jones, Serjeant, moved for a new trial in this case, which had been tried during the long vacation before the under-sheriff of Middlesex, and a verdict found for the plaintiff.

Patteson, J. Are you not too late? You should have moved within the first four days of term, and this is the sixth.

C. Jones. I mentioned this case yesterday, and asked leave to move it to-day.

Patteson, J. That can only place you to-day in the same position as if you had moved yesterday; now you were too late yesterday, it being the fifth day of term.

C. Jones. But in this case an order was obtained from the judge at chambers to stay proceedings, and the terms of the order are to stay all proceedings until the fifth day of the present term; now, as I am to be taken to have moved yesterday, it is submitted that the motion is in time.

Patteson, J. Suppose the order had been to stay all proceedings until next Hilary Term, do you mean to say that you could have moved within that time for a new trial? You certainly could not have done so; by the order to stay until the fifth day of term, it is merely meant that the parties are to take no further steps until you have had your opportunity to move within the first four days of term; that you have not done, and so you are too late.

Rule refused.

Ex parte Weilwork and another. Nov. 17, 1846.

AFFIDAVITS USED IN MOVING FOR A CERTIORARI, HOW TO BE INTITULED.

On moving for a certiorari to remove a conviction, the affidavits must not be intituled as in any cause, if they are so intituled they cannot be read.

Robinson appeared to show cause against a rule obtained by Archbold for a certiorari to bring up a conviction made by two justices under the Truck Act, (1 & 2 W. 4, c. 37.) He stated that he had a preliminary objection to the affidavits, on which the rule *nisi* had been obtained. The affidavits were intituled, in the Queen's Bench:—"In the matter of the Queen against Robert Weilwork and James Weilwork." This, it was submitted, was wrong; there was in fact no such case. It was true that the parties had been summarily convicted before two justices, but there was no prosecution or other proceeding pending against him at the suit of the Queen in this court. *Ex parte Nopro*, 1 B. & C. 267, was, it was contended, a case exactly in point. The affidavits in that case were used in moving for a rule *nisi* for a certiorari, and were intituled, "The King against the Justices of Essex;" and it was there held that they should not have been intituled at all, as no cause was pending before the court.

Archbold, in support of the case, contended, that it had never been held that an affidavit intituled as the present were, "In the matter of," was bad in moving for a certiorari; the distinction between this case and *Ex parte Nopro* was, that there the affidavits were intituled "The King against," which made a great difference; it might as well be said that it was wrong to intitule the affidavits in the

Queen's Bench, as the cause was not pending there.

Patteson, J. When I look at the affidavits and see them intitled "In the matter of the Queen against A. and B.," what am I to understand by it? what does it mean? It is an affidavit intitled in something in this court; now there is nothing in the court with that title, and the adding the words "In the matter," does not alter the question. I can not receive these affidavits, and therefore the rule must be discharged.

Rule discharged.

Common Pleas.

Petherbridge, appellant, and Ash, respondent.
Michaelmas Term, Nov. 11, 1846.

REGISTRATION APPEAL.—APPLICATION TO ENTER NUNC PRO TUNC.

Where it appeared that owing to delay on the part of the appellant's attorney, the requisite notice of appeal had not been procured, so as to be lodged with the master within the first four days of the term, as required by the 62nd section of the 6 Vict. c. 18, the court refused to allow the appeal to be entered nunc pro tunc.

Dowling, Serjeant, on behalf of the appellant, applied for leave to enter this appeal nunc pro tunc. The statement of the case had been delivered to the master within the proper time, namely, the 4th day of the present term. But finding that the notice of appeal required by the 6 Vict. c. 18, s. 62, was not attached thereto, the master had refused to enter the appeal. The affidavit of the appellant's country attorney stated, that the statement of the case had been duly made out on the 25th of October, and that the deponent had on the 4th of the present month gone to his client, a distance of some miles, to procure the requisite notice, but finding him absent, he had been unable to obtain his signature to the notice until eight o'clock of that evening. It was then too late for the next post, but by the earliest opportunity next morning the notice was dispatched, and reached London the same evening, not however in sufficient time to be delivered to the master on that the last of the four days allowed. Under these circumstances it was submitted the court would grant the application, the 64th section of the 6 Vict. c. 18, giving a discretionary power for that purpose. The case, too, of *Antey v. Topham and another*, 5 Man. & Gr. 1, seemed to show that circumstances might exist to warrant the entering of the appeal *nunc pro tunc*.

By the court. But what are the circumstances here? The appellant's country attorney does not think of obtaining the requisite notice until the very latest moment, although he knew long before that it was necessary, and had plenty of time. Then when he does apply for that purpose, his client is absent, as it was not at all unlikely he would be. There was really no sufficient ground for the application.

Application refused.

BUSINESS OF THE COURTS.

Court of Exchequer.

Michaelmas Term, 10th Victoria.

SPECIAL PAPER.

This Court will hold Sittings on Friday the 27th, and Saturday the 28th days of November, instant, and also on Wednesday the 2nd day of December next, and the three following days; and also on Saturday, the 12th day of December next, and will proceed in disposing of the business then pending in the *Special Paper*.

FRED. POLLOCK. J. PARKE.

E. H. ALDERSON. R. M. ROLFE.

If the arguments on Writs of Error from the Queen's Bench are not concluded on the 2nd Dec., the Court will not hold Sittings until they are concluded.

Central Criminal Court.

To the Sittings for the remainder of this year, which we stated in our last Number, namely:—

Monday, Nov. 23rd | Monday, Dec. 14th.

We now add those for

1847.

Monday, Jan. 4th.	Monday, June 14th.
Monday, Feb. 1st.	Monday, July 5th.
Monday, March 1st.	Monday, August 10th.
Monday, April 5th.	Monday, Sept. 20th.
Monday, May 10th.	Monday, Oct. 25th.

ADMISSION OF SOLICITORS.

The Master of the Rolls has appointed Wednesday, Nov. 25th, at the Rolls Court, Westminster, at one in the afternoon, for swearing in Solicitors.

The Common Law Admission or Certificate of Practice for the current year must be left at the Secretary's Office, Rolls Yard, Chancery Lane, before twelve o'clock on that day.

[This is a very considerable arrangement for those whose articles have not yet expired.]

THE EDITOR'S LETTER BOX.

WE think the work by Mr. Serjeant Merewether and Mr. Stephens is the best and most complete book on corporations adapted to the purpose of our correspondent at Newport.

We are not aware of any law library, except those in the Inns of Court and at the Law Institution. The former is confined to the members of the bar and students; and the latter to the members, and such clerks as are or have been under articles and are in the office of members. We hope H. R. will be able to procure the books he wants. It appears, that if the rules at the Law Institution permitted the admission of strangers, it would not be convenient to admit them on account of the present large number of members; but it is intended to enlarge the library or build an additional one for students; but the rights of members are, of course, paramount.

We trust the *Legal Almanac*, *Remembrancer*, and *Diary* for the ensuing year, which has been published thus early for the convenience of some of its subscribers, will be found to contain very material additions and improvements.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 28, 1846.

—“Quod magis ad nos
• Pertinet, et nescire malum est, agitamur.”

HORAT.

OPERATION OF THE POOR REMOVAL ACT.

WE are quite sensible how much easier it is to criticise an act of parliament than to frame one which is not open to objection; but when documents of this nature and authority are prepared in so bungling and imperfect a manner as to serve only to create doubts, and, instead of settling, to throw that branch of the law to which they relate into confusion and uncertainty; and when this happens not in a solitary instance, but in several during the course of a single session of parliament, it is impossible to avoid the conclusion, that the duty of preparing acts of parliament is thrown upon incompetent persons, or that the system under which they are framed is essentially erroneous and defective. Probably the disgraceful result is owing, partly to the defects of the system, and partly to the unfitness of the persons selected. Be this as it may, the evil is one of such increasing magnitude, and fraught with consequences so injurious to the public, that no government ought to hesitate in at least *endeavouring* to apply a remedy. If any member of the cabinet doubts that the occasion has arisen when interference cannot be delayed without discredit, let him refer to the Poor Removal Act of last session. *Ex uno disce omnes.*

This measure, it may be remembered, was announced by Sir Robert Peel, at the commencement of the last session, as one calculated to effect an important amelioration in the condition of the poor, the leading enactments securing the privilege of

irremovability to all persons, after five years of continuous industrial residence, and protecting a widow from compulsory removal from the parish in which her husband died, for a period of twelve months. When the bill was presented to the House of Commons in the first instance, it contained forty sections and seven schedules;^a and at this early period, whilst expressing our cordial approval of the principle, so far as it professed to confer any advantage or immunity on those who are compelled to seek for parochial relief, we took occasion to direct attention to the obvious haste and absence of consideration with which the proposed enactments were drawn, and ventured to hint, that the construction must have been entrusted to some person insufficiently qualified for the undertaking.^b The subject, however, was laid aside for more pressing topics. The bill was “hung up,” as the phrase is, in the House of Commons, during the discussions on the repeal of the corn laws, and until after the resignation of Sir Robert Peel and his colleagues, when it descended as an heirloom to their successors. In the hands of the present government the measure was considerably altered without being rendered more perfect; and when it obtained the royal assent on the 26th August last, it contained only ten sections, including those limiting the operation of the act to England, and authorising the amendment or repeal in the same session.

^a See Summary of the Provisions, Leg. Obs. of 28th March, 1846.

^b Vide. vol. 31, p. 493.

From this short act, (9 & 10 Vict. c. 66,^c) to which two governments acted as sponsors, and which has not yet completed a three months existence, as much doubt, perplexity, confusion, and injustice has already arisen, as from any enactment of equal extent that encumbers the statute book; and it is greatly to be apprehended that before the legislature can pass a remedial act, the poor, whom it was intended to benefit, will have suffered seriously from its operation.

It would be in vain to attempt to enumerate all the points of difficulty which present themselves upon the construction of this unfortunate piece of legislation, or even to particularise the instances in which persons of great professional experience and authority have found themselves constrained to differ with each other in their interpretation of its several clauses. We learn from a circular issued by the Poor Law Commissioners, that in consequence of various inquiries made of them as to the construction of the act, they consulted the Attorney and Solicitor General upon certain points which they deemed of most importance. We annex from the circular the version given by the poor law authorities of the opinion of the law officers, and their understanding as to its application, begging our readers to bear in mind, that the opinion of the law officers of the crown, although entitled to great respect as coming from men foremost in the ranks of the profession, has not the weight of judicial authority, and when unaccompanied by cases or reasons, is fairly open to be questioned and controverted. As the Poor Law Commissioners' circular does not refer to the queries upon which the opinion of the attorney and solicitor was taken, the answers may be in some degree unintelligible to such of our readers as are not intimately acquainted with the provisions of the act.

We may therefore observe, that the 1st section of the statute enacts, that "no person shall be removed, nor shall any warrant be granted for the removal of any person, from any parish in which such person shall have resided for five years next before the application for the warrant;" with a proviso, that in the computation of this period of five years' certain periods shall be for all purposes excluded, —as where the pauper shall be a prisoner, a patient in an hospital, in the naval or

military service, or a recipient of parochial relief. The question at once arises, if any of the events contemplated in the proviso has occurred within five years next before the passing of the act, has that circumstance rendered the pauper removeable? in other words, is the proviso retrospective or only prospective? The law officers are of opinion that it is not retrospective, but it is stated that those gentlemen added that they came to this conclusion *upon the language of the proviso, although they had no doubt the intention of the legislature was to make the proviso retrospective.* If the attorney and solicitor's opinion be well-founded in this particular, the declarations of the legislature and its intentions are directly at variance.

A question of a somewhat similar nature arises under the 2nd section, with regard to widows residing in a parish in which they are not settled, and whose husbands died before the passing of the act. Does the act prevent the removal of a widow so circumstanced during the first year of her widowhood? The law officers say it does not.

The most important and difficult question which has yet arisen, however, is not noticed or referred to in the published opinion of the Attorney-General and Solicitor-General. Whilst the act prohibits the removal of poor persons from a parish in which they are not settled, but in which they have resided for five years, it makes no provision for the support of such persons when they become chargeable, leaving it as a matter of doubt, whether the obligation to relieve a pauper rendered irremovable by this act, lies upon the parish in which he resides, or in that in which he is legally settled; or whether a pauper irremovable under the act and residing away from his own parish is entitled to any relief. It would appear from the first circular issued by the Poor Law Commissioners,^d that they consider non-resident relief should be discontinued, and that the obligation to relieve rests upon the place where the pauper actually lives. The act, however, contains no such provision, and the law, previous to the passing of the stat. 9 & 10 Vict. c. 66, imposed no obligation on parishes to maintain unsettled persons, or allow such persons relief, unless where they came within the description of *casual poor*, and it would appear to be a forced definition of that term to apply it to a per-

^c See the Act, vol. 32, p. 505.

^d See vol. 32, p. 624.

son who must have resided at least five years in the parish.

The difficulties created by the act in administering relief have been so strongly felt by many boards of guardians, that they have humanely and wisely come to the conclusion, to treat the act as a dead letter, and proceed as if it never had been passed, in every instance in which they can induce other boards to act on the same judicious resolution. The disastrous consequences of carrying the provisions of the act into complete operation, are so clearly and temperately explained in a report furnished by a committee appointed by the guardians of the city of London union, that we regret our inability to find room for more than the following extract from the report:—

“We find,” said the committee, “that in the construction of the act, there exists the most opposite and conflicting opinions, whereby the practice of the several unions throughout the country has assumed an inconvenient diversity, highly detrimental to the interests of the poor.

“We find, that while many of the unions and parishes are acting with large and liberal views, there are too many which have taken advantage of the uncertainty of the act, to relieve themselves from their just burthens, and cast them upon the parishes or unions where their poor, out of humanity, have been allowed to reside; in this strict view of the act they are supported by the legal opinions of the Attorney-General, Solicitor-General, and other learned persons.

“We are under a strong impression, however, that the said act was intended as a boon to the poor, and that the legislature in passing it, never contemplated that existing, ascertained, and acknowledged settlements should be practically defeated, or that the relations between the aged, infirm, and helpless, poor and their respective parishes should be annihilated.

“We are of opinion, however, that the sudden withdrawal of relief from the non-resident poor, many of whom are totally helpless and verging towards the grave, would be attended with inconceivable hardship and cruelty, by driving them to make out a new case before new and unknown masters, and perhaps subjecting them in their last years either to a workhouse, or an entirely different system and amount of relief.

“We think such a practice so manifestly unjust towards the poor, that we strongly urge upon the board of guardians the propriety of continuing their relief as hitherto, to those non-resident poor whose claims have been already made out and acknowledged, until a proper legal construction shall have been given to the said act of parliament.”

The following is the circular of the Poor Law Commissioners above adverted to, upon which we shall only observe, that if the guardians “find no difficulty in applying the opinions to the parts of the statute to which they relate,” as presumed by the commissioners, they will evince a clearness of perception and power of application, not possessed by ordinary mortals. In point of fact, however, we have reason to believe, that the commissioners have already before them tolerably cogent evidence, in the shape of official documents, to satisfy them that “the opinions,” and their assistant secretary’s commentary thereupon, have tended in no degree to remove the difficulties which encompassed those entrusted with the administration of relief to the poor, in endeavouring to carry into operation the provisions of the recent act.

“Poor Law Commission Office,
Somerset House,
20th October, 1846.

“Sir,—I am directed by the Poor Law Commissioners to state, that in consequence of various inquiries made of them as to the construction of the late Removal Act, 9 & 10 Vict. c. 66, they have deemed it right to consult the Attorney-General and Solicitor-General upon certain points which appeared to be of most importance in the application of the statute.

“The commissioners think it may assist the guardians if they communicate to them the opinions which the commissioners have obtained in answer to the questions which they submitted, and they have accordingly directed me to inform the guardians that the counsel above-mentioned are of opinion:—

- “1. That the proviso to the 1st section of the 9 & 10 Vict. c. 66, which sets forth the exceptions to the principal enactments that are to be excluded in the computation of time, is not retrospective in its operation, so as to apply to cases where the five years’ residence was complete before the statute.
- “2. That an interval between the completion of the five years’ residence and the application for the warrant of removal, filled up by one of the exceptions contained in the proviso, will not prevent the operation of the statute in restraining the removal of the pauper who had resided for the specified time.
- “3. That orders of removal obtained previous to the passing of the act, but not then executed by the removal of the paupers, cannot now be executed in cases where the 1st or 2nd sections would have prevented them from being granted if the applications were made subsequently to the passing of the act.
4. That the 2nd section does not apply to

the cases of widows whose husbands died before the passing of the act.

"5. That the 4th section does not apply to persons who became chargeable before the passing of the act, and continued to do so till the application for the warrant.

"6. That the statute applies equally to the removal of persons born in Scotland, Ireland, or the Channel Islands, as to persons having settlements in England, so as to override *pro tanto* the provisions of the 8 & 9 Vict. c. 117."

"The commissioners presume that the guardians will have no difficulty in applying these opinions to the parts of the statute to which they relate. They will see that according to the view taken by the high legal authorities above referred to, as to the effect of the first proviso, so far as relates to the time before the passing of the act, the simple fact of the actual residence of the pauper is alone to be considered, and consequently that no time during which the party may have been in the receipt of relief is to be omitted from the calculation of the term of residence, while any absence during that period, such as that caused by an imprisonment or a residence in an hospital, is to be treated as an interruption of the continuous residence to which the statute applies.

"With reference to the second question, I am to observe, that although in terms it is confined to an interval between the completion of the residence and the application for the warrant, the commissioners consider that the principle of the construction must equally apply to intervals in the time during which the period of residence is comprised, so that for, example, a residence of three years in a parish may be united with a subsequent residence of two years in the same parish, though in the interval the party may have been out of the parish in prison for several months, or serving her Majesty as a soldier for several years; this observation is, however, to be qualified by the supposition that the absence is one which is protected by the proviso.

"As some inquiries have been made upon the point, the commissioners wish me to state, that in the application of this statute, no difference exists, whether the cause arise between two parishes in the same union, or in different unions.

"The commissioners take this opportunity of impressing upon the guardians, that though this statute does not create any settlement in regard to the parties rendered by it irremovable from a parish, such parties will be, in reference to the subject of relief, altogether in the same situation as settled paupers; and any difference in the treatment of the two classes of paupers settled, and paupers simply irremovable, with reference to the nature, quantity, or quality of relief administered to them cannot be too strongly censured as not being warranted by law, and as being at variance with every principle of fairness.

"I am also to desire the guardians strictly to caution their officers against any attempt to

procure the transfer from one parish to another of the parties whom this statute has rendered irremovable, by threats, or promises, or other inducements. The penalty imposed by the statute on such conduct has already been brought under the notice of the guardians by the commissioners in their letter of the 17th ultimo.

"I remain, Sir, your most obedient servant,

"W. G. LUMLEY, Assistant-Secretary.

"To the Clerk of the Guardians."

LAW OF COSTS.

PRACTICE OF ENFORCING PAYMENT BY ATTACHMENT.

THE course of proceeding in enforcing payment of a bill of costs after taxation by attachment is explicitly stated by Mr. Justice *Erle*, and the difference of practice traced where the client has signed the undertaking to pay what should be found due on taxation, in a case in the Common Pleas very lately reported.*

In the case referred to the usual summons was taken out, calling upon one Leonard Albin to show cause why G. D. Woodhouse's bill of costs should not be referred to the Master for taxation, &c., and upon this summons an order was granted, which order was subsequently made a rule of court. The Master having certified that a certain sum was due to Mr. Woodhouse, the court was applied to upon an affidavit of personal service of the order and rule, to grant a rule *nisi* for an attachment against Albin; and in support of the application, it was suggested that the late statute 6 & 7 Vict. c. 73, s. 43, did not affect the power of the court to enforce obedience to the judge's order when made a rule of court, by attachment, the section referred to expressly providing, that "payment of the amount certified to be due and directed to be paid, may be enforced according to the course of the court in which such reference [to taxation] shall be made."

The court, however, refused to grant the rule at this stage, inasmuch as there had been no order to pay which the party proceeded against had disobeyed. The course was different where the party entered into an undertaking to pay on submitting to taxation. Then, the breach of the undertaking was a contempt of court punishable by attachment. Here, the

* In the matter of *G. D. Woodhouse*, 2 Com. Bench Rep. 290.

proper course was, to move for an order upon the party to pay the amount of the allocatur or certificate, and then to proceed by attachment, if that order was disobeyed.

NOTES ON EQUITY.

PRESUMPTIVE EVIDENCE OF DEATH.

IN a case recently reported by Mr. Simons,* the Vice-Chancellor of England observed that the old law relating to the presumption of death was daily becoming more and more untenable.

The decree had directed the Master to inquire whether one Mary Bilton was living or dead, and, if dead, when she died. The Master reported that she died in 1821, "being seven years after she was last heard of." It appeared that the report was founded on an affidavit made, not by a relative of Mary Bilton, but one who deposed that, in 1809 or 1810, when she was about 16 or 17 years of age, she clandestinely left the house of her father, who was a small farmer in Yorkshire; and that she had not since been heard of, except that, in 1814, she wrote a letter to her sister, from Portsmouth, which the deponent stated that she intended to go abroad.

The Vice-Chancellor said, "It strikes me that there is considerable difficulty about this case, which, like every case of the same nature, must be determined according to its own peculiar circumstances. Here a girl about 16 or 17 years of age, whose father was a farmer, chose, for some reason which does not appear, to leave her father's house, and to go no one knows where. But it seems that, in 1814, she was at Portsmouth, and that she then intended to go abroad. Therefore it is but reasonable to presume that, all along she had been concealing herself, and that she never intended to return home. The mere fact of her not having been heard of since 1814, affords no inference of her death; for the circumstances of the case make it very probable that she would be never heard of again by her relations. How can I presume that she died in 1821, from a fact which is quite consistent with her being alive at that time? Owing to the facility which travelling by steam affords, a person may now be transported in a very short space of time from this country to

the back-woods of America, or to some other remote region, where he may be never heard of again."

It may, however, be urged that whilst the facility of travelling enables persons rapidly to remove to distant regions, the frequency of epistolary communication generally transmits intelligence of these erratic movements with equal or greater velocity. Flight is more rapid than formerly, but so are the tidings of loss or arrival.

NEW STATUTES, EFFECTING ALTERATIONS IN THE LAW.

RAILWAY COMMISSIONERS.

9 & 10 VICT. c. 105.

An Act for constituting Commissioners of Railways. [28th August, 1846.]

1. 3 & 4 Vict. c. 97.—5 & 6 Vict. c. 55.—7 & 8 Vict. c. 85.—8 & 9 Vict. cc. 20, 33.—*Her Majesty empowered to appoint commissioners of railways, one of whom to be president, and from time to time remove them.*—Whereas by an act passed in the 4 Vict., intituled "An Act for regulating Railways;" and by another act passed in the 6 Vict., intituled "An Act for the better Regulation of Railways, and for the Conveyance of Troops;" and by another act passed in the 8 Vict., intituled "An Act to attach certain Conditions to the Construction of future Railways authorized or to be authorized by any act of the present or succeeding Sessions of Parliament, and for other Purposes relating to Railways;" and by two other acts passed in the last session of parliament, for consolidating in one act certain provisions usually inserted in acts authorizing the making of railways respectively, and by sundry local acts of parliament, certain powers with respect to Railways are vested in the lords of the committee of Her Majesty's, most Honourable Privy Council for Trade and Foreign Plantations; but it is expedient that a separate department be constituted for these purposes, and for other purposes relating to railways: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful for her Majesty, by warrant under the royal sign manual, to appoint any number, not more than five persons, to be commissioners of railways, and from time to time, at her pleasure, to remove all or any of the said commissioners, and to appoint others in their stead, and to appoint one of the said commissioners to be their president; and any two of the said commissioners shall be competent to act in the execution of the powers vested in them by this act; and upon any vacancy in the number of the said commissioners, it shall be lawful for the surviving or continuing

commissioners, not being less than two, to act, and their acts shall be as valid as if no such vacancy had occurred; and every such appointment or new appointment, and also the day on which the said commissioners shall begin to act in execution of this act, shall be published in the *London Gazette*.

2. *Power of Board of Trade transferred to commissioners.*—And be it enacted, That from and after the day which shall be so specified in the *London Gazette* as the day on which the said commissioners shall begin to act in execution of this act, all the powers, rights, and authority now vested in or exercised by the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations by virtue of the recited acts, or by any other act of parliament, or otherwise howsoever, with respect to any railway or intended railway, shall be transferred to and vested in and exercised by the commissioners of railways, as fully as if they had been named in the said several acts of parliament instead of the lords of the said committee; and all provisions of the said acts shall be deemed to apply to the said commissioners instead of the lords of the said committee; and all proceedings now pending before the lords of the said committee, or carried on under their authority, shall be continued and carried on by and before the said commissioners, who shall have and exercise the same powers, rights, and authority in respect of all such proceedings as if they had been originally commenced before the said commissioners.

3. *An office to be provided, under the direction of the Treasury.*—And be it enacted, That an office shall be provided in London or Westminster, under the directions of the Commissioners of Her Majesty's Treasury, for the use of the commissioners appointed under this act, at or to which all notices and other documents shall be given or sent which are now by law required to be given or sent at or to the office of the lords of the said committee.

4. *Documents sealed by commissioners to be evidence.*—And be it enacted, That the commissioners of railways shall cause a seal to be made for the purposes of their commission, and all orders and other documents proceeding from the said commissioners, and purporting to be sealed or stamped with the seal of the said commissioners, and signed by two or more of the said commissioners, shall be received as evidence of the same respectively in all courts and before all justices and others, without any further proof thereof.

5. *Commissioners to appoint a secretary, officers, &c., subject to approval of Treasury.*—And be it enacted, That the said commissioners may appoint and at their pleasure remove a secretary and so many other officers and servants as to them, subject to the approval of the Commissioners of her Majesty's Treasury, shall appear necessary for carrying on the business of the said commission.

6. *Payment of salaries to commissioners, officers, and servants.*—And be it enacted, That the president and two other commissioners,

and the secretary, officers, and servants of the said commissioners, shall be paid by such salaries as shall be from time to time appointed by the Commissioners of her Majesty's Treasury, not exceeding the sum of 2,000*l.* in the case of the president, and the sum of 1,500*l.* in the case of either of the two other paid commissioners, and in the case of the secretary and other officers and servants of the said commission, such fit salaries as shall be from time to time appointed, with due reference to their several stations and the duties they will have to perform.

7. *President not disqualified to sit in parliament.*—And be it enacted, That the office of the said president shall not be deemed such an office as shall render him incapable of being elected or of sitting or voting as a member of the Commons House of Parliament, or as shall avoid his election if returned, or render him liable to any penalty for sitting or voting in parliament.

8. *Unpaid commissioners not disqualified to sit in parliament.*—And be it declared and enacted, That the office of any other of the said commissioners who shall not be entitled to receive a salary by reason of his appointment to such office, shall not be deemed such an office as shall render him incapable of being elected or of sitting or voting as a member of the Commons House of Parliament, or as shall avoid his election if returned, or render him liable to any penalty for so sitting or voting; and if any such unpaid commissioner shall be a member of the House of Commons at the time of his appointment, his acceptance of such appointment shall not avoid his election or vacate his seat in parliament; and for the purpose of distinguishing which commissioners are qualified to sit in parliament under this act, the warrant appointing any such commissioner shall specify that he will not be entitled, by virtue of such appointment, to receive any salary or remuneration whatsoever.

9. *Commissioners to exercise powers now vested in the Board of Trade.*—And whereas in some cases railway companies have exceeded the powers given to them under the acts constituting them, or have otherwise acted contrary to the provisions of the said acts, or of the general acts for regulating railways; be it enacted, That it shall be the duty of the said commissioners to prevent any such unlawful proceedings, by the exercise of powers now vested in the lords of the said committee.

10. *Commissioners to report to her Majesty and both houses of parliament upon any case specially referred to them.*—And be it enacted, That it shall be the duty of the said commissioners to examine and report to her Majesty and both houses of parliament upon any subject relating to any railway, or proposed railway, which shall be specially referred to them for their opinion by her Majesty, or by either house of parliament; and in the case of any application to parliament for any act for making or maintaining any railway, it shall be their duty, if so directed by her Majesty or by the

authority of either house of parliament, to inquire and report, on local inspection or otherwise,—

Firstly, Whether there are any lines or schemes competing with the proposed railway :

Secondly, Whether by such bill it is proposed to take powers of uniting with such railway, or proposed railway, any other railway or canal, or to purchase or lease any railway, canal, dock, road, or other public work, undertaking, or easement :

Thirdly, Whether by such bill it is proposed to constitute any branch railway, or any other work in connexion with the proposed railway :

Fourthly, Whether any plans, maps, and sections of any such proposed railway which, pursuant to any order of either house of parliament, shall have been deposited in their office, are correct, and if not, in what particulars and how far they are incorrect, and whether or not, in the opinion of the commissioners, such errors as they shall find are material to the object for which such plans and sections are required.

11. *Commissioners empowered to inspect and survey proposed railways.*—4 & 5 Vict. c. 30.—

And be it enacted, That for the purposes aforesaid the said commissioners shall be empowered, by themselves, or by such inspectors as they shall appoint for that purpose, to inspect and survey any proposed line of railway, and for the purposes of any such survey they and their inspectors shall have all the powers which under an act passed in the 5 Vict., intitled “An Act to authorize and facilitate the Completion of a Survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man,” any officers or persons appointed by or acting under the orders of the Master-General and Board of Ordnance have for the purpose of making and carrying on any survey authorized by the last-recited act; and all the provisions of the last-recited act in anywise relating to any such survey shall be deemed to apply, so far as they are applicable, to any survey which may be directed by the said commissioners under this act, provided that all allowances and payments made under this act of the same kind as those which by the last-recited act are to be paid out of the aids granted by parliament to her Majesty on account of the Board of Ordnance, and also all other expenses incurred by the commissioners in making such survey and inspection, shall be paid by the provisional committee or directors or other persons who shall be the promoters of the said intended railway; and in case of nonpayment of the same in any case, the amount of such allowances, payments, and expenses shall be deemed a specialty debt due to her Majesty from such committee-men, directors, and other persons, and each of them severally, and shall be sued for and recovered accordingly.

12. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

NOTICES OF NEW BOOKS.

A Practical Compendium of the Law and Usage of Mercantile Accounts: describing the various Rules of Law affecting them, the Ordinary Mode in which they are entered in Account Books, and the various Forms of Proceeding, and Rules of Pleading and Evidence for their Investigation, at Common Law, in Equity, Bankruptcy, and Insolvency, or by Arbitration. By EDWARD PULLING, Esq., of the Inner Temple, Barrister-at-Law. London: H. Butterworth, Fleet Street, 1846. Pp. 222.

THE Law Merchant, like most other great heads of jurisprudence, possesses the advantage of having been portioned out by different writers for the convenience either of students or practitioners. Amongst the names distinguished in this department of jurisprudence are Lord Tenterden, Judge Story, Mr. Chitty, and Mr. J. W. Smith. The author before us, already known as a diligent and learned writer, has selected mercantile accounts as the subject of his present labours; and, considered as a detached subject of commercial law and usage, we are not aware of any more important or practical topic of investigation.

Accounts are to the man of business what history is to the statesman. The future must be materially regulated by the past. The transactions of to day must be accurately recorded, in order to guide by experience the speculations of to-morrow.

Mr. Pulling observes that system and regularity on the subject of accounts are of paramount importance in the conduct of mercantile affairs. And we would add, that equal attention is requisite in legal business.

“The neglect of this duty is injurious enough in case of private individuals, but in that of a merchant or trader such neglect is of a very culpable character, obviously rendering it impracticable for him to conduct his affairs with safety, or to ascertain the amount of his outlay, profit and loss; his exact position with respect to his creditors and the public in general; or indeed the just balance due to or owing from any particular individual with whom he deals.

"The French *Code de Commerce* makes a regular system of accounts compulsory upon all commercial men. There is no such express direction in our commercial code, but common prudence, supported by various legal sanctions, tends to enforce the observance of this obvious duty among traders of every class.

"In case of litigation the production of books of account can always be required, and the entries therein made evidence between the litigating parties. The bankrupt laws impose heavy penalties on traders wilfully falsifying their accounts, and even remissness or negligence in keeping accounts very commonly operates as an objection to an insolvent trader obtaining his certificate. The accounts of traders are always liable on an imputation of fraud or unfairness to be investigated in a court of equity, and in cases of long pending transactions, where the lapse of time *prima facie* operates as a bar, the Statute of Limitations expressly exempts mercantile transactions which have been made matters of mutual account.

"The interference of a court of equity can, as a general rule, be obtained wherever there are open unsettled matters of account between two parties, and, in order to further the investigation, the courts will usually enforce a disclosure or discovery on oath of the particulars, and a production of all books and vouchers relating to the matter in dispute. In some cases, as we shall see, the same object may be obtained by proceedings at common law, and in the case of agents or others placed in a position of trust, either public or private, with regard to others, this is most rigidly enforced, the neglect to keep accounts in such cases being in a high degree culpable, and the ordinary incapacity to contract or engage in mercantile dealings is, with the exception of the case of infants, no legal excuse for such neglect.

"As the omission of a duty usually raises an inference prejudicial to the defaulting party, it is moreover laid down, that on the refusal or neglect of an agent or bailiff *ad merchandizandum* to render an account of his principal's property within a reasonable time, it may be presumed, in an action at law, that he has received cash for it."

The author has conveniently described the design of his work in the preface. It is divided into three chapters, in which he has given a very complete exposition of the law and usage relating to accounts in any way connected with trade.

"The first chapter treats of the various points on the law of debtor and creditor, partnership, principal and agent, bankruptcy and insolvency, &c., which mercantile accounts ordinarily give rise to, comprehending within the very limited space here devoted to them, a most material portion of what is treated of under those heads in the existing text-books and abridgments.

"The second chapter describes the system and routine of book-keeping and accounts adopted among the trading community, divested of some of that obscurity in which the subject is generally enveloped. The great importance of this kind of information to the legal practitioner in the investigation of mercantile disputes, appeared to me to render it well worthy of a separate chapter, and I trust it will serve materially to lessen the labours of the professional reader, who, unless practically acquainted with the subject by long experience, has at present no guide to refer to but the prolix dissertations on *double and single entry* by which the subject is professed to be taught in commercial schools.

"In the third chapter, which is devoted to the subject of the investigation of mercantile accounts, are collected the rules of pleading, evidence and practice, for the investigation of disputed accounts, under the various forms of proceeding at common law, in equity, bankruptcy and insolvency, and by arbitration.

"Most of these forms of proceeding are of course familiar to the legal practitioner, and the principal of them are treated of in the ordinary books of practice, but nowhere are they collected together or peculiarly treated of with reference to the subject before us, so as to enable the practitioner to view the subject divested of extraneous matter, and to select the remedy most appropriate to his particular case. The contents of the second and last sections, which treat of the action of account and references to arbitration, appear to me peculiarly deserving the attention of the practitioner, with a view of protecting the client from expense, and answering the popular objection that it is generally better to put up with injustice than resort to litigation.

"The subject of the action of account, also, I take this opportunity of respectfully submitting to the consideration of the judges of the common law, the exercise of whose power of improving the rules of pleading and practice might in this instance establish a practical legal reform of incalculable value, by putting an end to the present system of uniformly making partnership disputes the subject of a chancery suit."

We cannot say that we agree with this last suggestion, for we believe the Court of Chancery,—duly improved in its practice in the Master's office,—is much better fitted than any other tribunal for the investigation of accounts and the adjusting of complicated disputes.

THE LAW STUDENT.

STUDIES OF ARTICLED CLERKS.

WE commence, in the present volume, a new series of articles for the use of students in the law; and seeing the attention which has been

recently called to improved means of legal education, we cannot do better in behalf of that numerous class about to enter the larger branch of the profession—the articulated clerks of solicitors—than extract some of Mr. Warren's excellent advice on the course of study peculiarly adapted to them.*

"Students, both for the bar, and for the other branch of our profession, are, or ought to be, *gentlemen*; and equally ambitious of excellence, and strenuous in endeavouring to attain it. Each sphere of action is honourable—each lucrative—each calculated to enable its members to acquire the esteem and confidence of each other, and of the public. Different duties are assigned to them; but all are arduous and important,—all require integrity, gentlemanly feeling, industry, talent, and accomplishment. As to which of the two is superior to the other, in social estimation,—in point of rank, and public distinction, and so forth,—let such matters be left for childish dispute and rivalry to those, in either branch of our profession, who understand the duties of neither, and are laughed at by the superior members of both.

"If a youth be desirous of passing through the period of his clerkship with pleasure and advantage to himself and his master, let him *begin well*, by bestowing great attention upon all that goes on in the office, however small and apparently unimportant. Let him learn early to go about business quietly, thoroughly, and methodically; doing nothing *without inquiring and reflecting upon the reasons of it*. If he have the good fortune to be articulated to a kind and intelligent master, nothing will give the latter so much satisfaction, as to see his clerk manifest such an inquiring spirit. He will readily refer him to the books of practice, and give him all the *vivâ voce* information that is requisite. If he will go on thus for a few months, he will soon find that he has entered an interesting profession, and be conscious of making a rapid progress in it. He must not be reluctant to do the common *drudgery*, as it is called, of the office. There are some young gentlemen who cannot bear the idea of "tramping" day after day to the courts, public offices, judges' and counsels' chambers, &c., &c., or of copying out and engrossing drafts of bonds, agreements, leases, settlements, &c.; which is exactly the reason why they turn out such dunces, and tremble so violently on passing a certain spacious building in Chancery Lane. More information as to the practical course of business is to be learnt from a day or two spent in serving notices, process, &c., signing judgment, obtaining and opposing the various rules, orders, summonses, &c., making up issues, attending the masters of the courts of law or equity, getting instruments executed and stamped, &c., &c., &c., than is to be ob-

tained in many months, by the most careful perusal of books of practice. Let the young clerk have his wits about him, wherever he is; whatever he may be doing, let him never *hurry*, in however great *haste* he may be; let him not do anything superficially,—in a slovenly inattentive manner. Bad habits of this—indeed of any kind—are easily formed, though not easily got rid of; their tendency is to increase and multiply, and they very soon incapacitate him who has contracted them, for the proper transaction of any kind of business. Then it is, indeed, that an attorney's office becomes odious, and that a relief from its monotony is too frequently sought in dissipation.

"The pupil should make constant efforts to acquire early a knowledge of the structure and uses of the *ordinary* instruments upon which he is employed—such as bonds, leases, assignments, mortgages, wills, settlements, &c., making a point of reading, every evening, some practical work upon the subjects which have chiefly occupied his attention during the day. Take a common money bond, for instance: nothing can be shorter and simpler in form than this instrument, and yet much interesting and important information concerning it, may be acquired by an industrious pupil, in a very short time. Has he any idea of the origin of the *penalty* of a bond? Is he aware that it was originally contrived to evade the absurdity of those monkish constitutions which prohibited taking interest for money? What will be the consequence of a creditor's taking a bond, with reference to other previous securities for the same debt? Will it abridge, or extend, his former rights? What effect will the death or bankruptcy of either party have upon it? What are the general advantages of taking a bond? &c., &c., &c. Information on these and similar questions can always be easily obtained by the pupil; and when obtained, will very much enhance the interest of business and augment the facility with which he can despatch it. The practice of the courts should also constantly command a prominent share of his attention. He should endeavour to acquaint himself with the *reason* of the various rules upon which he is perpetually acting, or he may depend upon it that he will never become a really able practitioner.

"If it be settled beforehand, whether the young attorney is to practise in town, or in the country, that should be a leading consideration in determining to what branch of legal studies his attention should be principally directed. If, for instance, he intend to settle in London, he must early devote himself to learning the practice of the various courts of common law, equity, and bankruptcy, and commercial law. If he intend to practise out of London, he should be guided by the circumstance of his residing in one of the great manufacturing towns, or in the country, properly so called. In the former instance, he will direct his chief attention to the law regulating manufactures

* Warren's Popular and Practical Introduction to Law Studies, and Guide to the Legal Profession.

and commerce—patents, machinery, bills, promissory notes, partnership, agency, insurance, bankruptcy, and insolvency; in the latter, to what may perhaps be termed agricultural law,—that of real property, sales of land, mortgages, copyholds, landlord and tenant, farming leases, distresses, notices to quit, &c., &c., and to sessions and criminal law generally. Here, also, it is of special importance that the practitioner should be well acquainted with the law of wills, executors, &c., called on, as he often is, to frame the former instruments, and advise the latter parties, on the spur of the moment, before he can himself obtain advice or assistance from town or elsewhere. In fact, one of this latter class of practitioners is thrown more upon his own resources than the other two put together; and it is therefore incumbent upon him to devote his best energies, during his clerkship, to the acquisition of a thorough knowledge of his profession. When he comes to London to spend half a year with his master's agent, or with a conveyancer, he should pay almost undivided attention to real property law.—This is a most important period in the life of the young articled clerk, and very much of his future happiness and success, will depend upon the manner in which he shall have employed it. Always considering how short is his time, and how much is to be done in it, he must avoid forming a numerous acquaintance and squandering his money, and wasting his days or nights, in visiting scenes of amusement and dissipation. If he be not wise in time, in this respect, he will assuredly find out his folly, and bitterly regret it hereafter. Let him rest assured that his master's good opinion will always be of great importance, in many more ways, and for a much longer period, than a thoughtless and dissolute clerk may dream of. Is it likely that his master, who often has the opportunity of recommending a young attorney or solicitor for lucrative and confidential situations, will do so, in the case of a clerk whom he knows to have spent his clerkship in idleness or profligacy."

"A youth, on first entering an office, should content himself, for a month or two, with getting an insight into the routine of business. Then Smith's *Elementary View of the proceedings in an action at Law*, may be put into his hands, followed by Stephen on *Pleading*, of which only the first part is to be read. Then select portions of Mr. Maughan's *General Principles of the Law of England*, of Mr. Williams' *Principles of the Law of Real Property*, and of Mr. Smith's *Mercantile Law*, and of Selwyn's *Nisi Prius*, may be read with great advantage by an industrious pupil, under his master's direction. The author also would venture to recommend for perusal the chapters in this work devoted to the subjects of equity, common law, conveyancing, and criminal law—in which will be found a plain account of the existing mode of administering these great branches of the law. But his object should be to master the general run of business in the

office—the practical mode of enforcing or resisting rights, in the different courts—the ordinary conveyances and pleadings which are continually passing under his eye—endeavouring at the same time, to refer for the full explanation of them, to the works above-mentioned.—He should also make a point of studying the opinions and drafts of pleaders, conveyancers, and barristers; and, whenever he has an opportunity, should make a copy of them, together with a short abstract of the facts to which they relate. He will soon find himself reaping great benefit from such a practice. When he goes to the courts, either at sessions or the assizes, or the law and equity courts in the metropolis, he should *really attend* to the proceedings, especially in those cases which are being conducted in the office in which he is serving. When he is a little more advanced in his studies, he may consult those chapters in the present work (Chapters XIV., XVI.) in which the leading treatises on the different heads of law are enumerated, and select those which may appear to him, or his adviser, best suited for his purposes. If it can be conveniently done, he should spend a year with a conveyancer, and also with a pleading barrister—or, at all events, half a year with each; and make the most of the brief and expensive, but precious opportunity. Thus the young attorney and solicitor will lay the foundation of a first-rate professional education, which will enable him readily to take advantage of any opportunity which may offer—and many do offer—of displaying his professional qualifications before those who will appreciate them, and give him the substantial rewards due to persevering industry and talent. The author knows of several instances, within the last year or two, of young men of this description being taken into partnership in houses of eminence, solely on account of their well-tried energy, talents, and assiduity; and of others who have, for the same reasons, shortly after commencing practice, been employed by wealthy clients, who have introduced others, and so led to the speedy formation of an extensive and lucrative practice."

SELECTIONS FROM CORRESPONDENCE.

TIME TO PLEAD.—LONG VACATION.

Benton v. Crafts.

MR. EDITOR,—As there seems to be considerable doubt amongst members of the profession as to the construction to be put upon the rule of court of Michaelmas 3 William 4, r. 12, made in pursuance of the statute 2 William 4, c. 39, you will perhaps be good enough to insert in your valuable paper the following case, which was decided by Mr. Justice Cresswell. The action was one of trespass for taking the plaintiff's goods, the declaration was served on the 19th day of June, 1846, to

plead in four days. Further time was obtained from time to time, and on the 3rd of August an order was made by Chief Baron Pollock, giving the defendant 10 days further time to plead, seven of which expired before the 10th of August. On the 24th of October the plaintiff signed judgment, and on the following day served a notice of a writ of inquiry. A summons to set aside judgment and all subsequent proceedings, was served on the same day, and on the 2nd November, Mr. Justice Cresswell, after referring to various authorities and to the rule of court above mentioned, expressed himself clearly of opinion that the defendant was entitled to the same number of days after the 24th October as he had by the Chief Baron's order of the 3rd of August, viz., 10 days after the 24th October, and his Honour made an order setting aside the judgment, &c. The cases relied upon by the defendant, were *Wilson v. Bradstocke*, 2 Dowl. Practice Cases, 416, and *Trinder v. Smedley*, 3 Dowl. P. C. 87.

E. M.

LECTURES AT THE INNS OF COURT.

GRAY'S INN.

At a Pension held on the 24th day of November, 1846.

THE Masters of the Bench of Gray's Inn have resolved to establish a lectureship of *real property and conveyancing, devises and bequests*, and have ordered that the sum of 300*l.* per annum for three years be paid by the society by way of endowment, to such person as the bench shall elect to deliver the lectures, to begin from the day of his appointment.

The benchers therefore invite gentlemen desirous to accept the office of lecturer to send in testimonials of their competency and fitness, addressed to the treasurer, at the stewards' office, in South Square, Gray's Inn, on or before the last day of Hilary Term next.

The benchers are desirous that, in addition to the lectures, some further means should be adopted to secure the attention and to ascertain the proficiency of the students.

The discussion of some appointed subjects, in which the students should be invited to join, subject to proper regulations; opportunities afforded to students of stating and of obtaining from the lecturer the solution of difficulties, and examinations in the subjects of the previous lectures and discussions, suggest themselves as means, by the judicious application of which, the end in view may be attained. The benchers express, however, no opinion as to the best course to be adopted, but they suggest these matters to explain distinctly their object in establishing this lectureship, and more particularly to induce each candidate to send in such a plan of the course of instruction he proposes to adopt as may enable the

benchers to form a judgment of its probable efficiency.

THOS. GRIFFITH, Steward.

NOTES OF THE WEEK.

LAW OF TITHES.

THE important question in *Salkeld v. Johnson*, was again brought before the Lord Chancellor on the 19th instant, when Sir J. Simpson for the plaintiff, stated, that the parties had not come to an arrangement, by which the case might at once go to the House of Lords: it must therefore be sent on the same case as in the Common Pleas, to the Court of Exchequer, as was proposed by the Lord Chancellor on Thursday last, when it stood over at the request of Mr. Wood, the defendant's counsel.

It appears from the reasons of the late Lord Chief Justice Tindal and of Mr. Justice Cresswell, in support of their joint certificate in *Salkeld v. Johnson*, sent to the Lord Chancellor, that that case differs from *Fellowes v. Clay*, 4 Queen's Bench Rep. 357, (upon which the judges of the Court of Queen's Bench were also equally divided) in this respect,—that in *Salkeld v. Johnson*, the claim is not of an exemption from the payment of tithes generally, but only from the payment of certain particular things, and that it may be well doubted whether the statute has any application to such a state of things, for the evidence thereby required is of the enjoyment of the land without payment or render of tithes money or other worth in lieu thereof; whereas the land in question in *Salkeld v. Johnson* has not been enjoyed without payment or render of tithes, although the tithes there in question, (viz. tithes of turnips, potatoes, agistment, and green crops,) have not been rendered, nor has any money or other matter been paid or rendered in lieu thereof.

RAILWAY LITIGATION.

The Court of Exchequer on the last day of term, made absolute rules for new trials in the only two cases yet argued, involving the question as to the liability of provisional committee-men of railway companies. Our commentary on the judgment must be reserved for next week. The chief points which appear to have been decided are,—1st, That several persons agreeing to become members of a provisional committee do not thereby create the relation of partners; 2ndly, That an individual by the isolated fact of consenting to become a provisional committee-man, does not afford any evidence to fix him with a liability for reasonable preliminary expenses; and lastly, that where an individual has authorized his name to be inserted as a member of a provisional committee in a prospectus, that is an additional circumstance creating a responsibility commensurate with and dependent upon the statements contained in the prospectus.

ATTORNEYS TO BE ADMITTED,

Hilary Term, 1847.

Queen's Bench.

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Ashley, William Edward, 8, Elizabeth Street, Brompton; Newark-upon-Trent; and Brompton Terrace	J. Would Lee, Newark-upon-Trent
Abrahams, Michael, 19, Cambridge Terrace, Hyde Park	Samuel Abrahams, Lincoln's Inn Fields
Armitage, James, 1, Garden Place, Lincoln's Inn Fields; and Downham Road	J. Crosland Fenton, Huddersfield
Alston, Henry Frederick, 15, Upper Berkley Street West; and John Street	John Stevenson, King's Road
Brabner, Samuel Peeling, 59, Albert Street, Mornington Crescent; Staple Inn; and Clarence Road	Thomas Atkinson, Lincoln's Inn Fields
Beck, John Grant, 3, Judd Place East, New Road	G. Jones, Salisbury Square
Brumell, Francis, 27, Perceval Street; and Morpeth	Samuel Brabner, Liverpool
Bateman, Richard, 73, Myddleton Square; Knowle; and Newland Street, Pimlico	Edward Chester, Staple Inn
Brooks, Thomas, 10, Lower Calthorpe Street; Burton-on-Trent; and Derby	Charles P. Harris, Cambridge
Burton, Joseph, jun., 22, Brunswick Place, Barnsbury Road; and Vernon Square	George Brumell, Morpeth
Bremridge, Thomas Julius, 7, New Ormond Street; and Heavitree	John Stevenson, King's Road
Berry, John Johnson, Stoke-upon-Trent	Arthur John Knapp, Bristol
Bristow, Ebenezer John, 23, Charlotte Street, Bedford Square; and Exeter	Francis Jessopp, Derby
Beddoe, Henry Child, 7, Featherstone Buildings; and Ledbury	F. Talbot, Bedford Row
Byam, William Henry, 2, Church Row, Newington Butts; Bristol; and Church St.	H. M. Ford, Exeter
Bell, William, jun., 30, Cloudesley Street; Halifax; and Leeds	John Mitchell, Wymondham
Borlase, John James, 39, Gower Place; Helston; and Green Terrace	John William Ward, Newcastle-under-Lyne
Cole, George Henry, 5, Manchester Terrace, Liverpool Road	John Stogdon, Exeter
Copeman, Thomas, 6, Sackville Street, Piccadilly	George Masfield, Ledbury
Clarke, Robert, jun., 5, Newman's Row, Bath; Duke Street; and Albion Place	R. John Bridges, Bristol
Collins, Nathaniel Kyrle, Ross	Henry Hill, Verulam Buildings
Chorlton, John Higginbotham, Runcorn	Glynn Grylls, Helston
Canning, Walter, Handsworth, near Birmingham	John Platt, Church Court, Clement's Lane
Crossman, William, 56, Swinton Street; and Berwick-upon-Tweed	R. W. Parmeter, Aylsham
Coyte, James, 53, Acton Street, Gray's Inn Road; and Halesworth	Robert Clarke, Bath
Cutts, John, jun., 61 George Street, Euston Square; and Chesterfield	Edward King, Bath
Carpenter, Alfred Benjamin, 5, Haxpur Street, Red Lion Square; and Stanhope Street	John Stratford Collins, Ross
Cockram, George Woodbury, Tiverton	Samuel Chorlton, Runcorn
Cartmale, John, 22½, Basing Lane; and Litchfield	William Fellowes, jun., Dudley
Coleridge, Francis James, 16, Surrey Street, Strand; Mill Street; and Ottery St. Mary, Devon	Thomas Gilchrist, Berwick-upon-Tweed
	John Crabtree, Halesworth
	John Cutts, sen., Chesterfield
	Richard Baynes Armstrong, Staple Inn
	John Loosemore, Tiverton
	Thomas L. T. Rendell, Tiverton
	Edward Wyatt, Litchfield and Whittington
	Thomas Hodgson, Litchfield
	Francis George Coleridge, Ottery, St. Mary

Cursham, William George, Nottingham . . .	W. Cursham, and H. P. Campbell, Nottingham
Cook, Robert, 3, Wilmington Square; and Symond's Inn . . .	Francis Stainer, Newcastle-under-Lyne W. A. S. Pemberton, Symond's Inn
Crosse, John Macartney, 8, Nelson Square, and Stowmarket . . .	Adam Taylor, jun., Norwich J. B. Ransom, Stowmarket J. W. Flower, Fread Street
Dimsdale, Frederick, 17, Clement's Inn; and Hadley . . .	W. Borradaile, King's Arms Yard
Dalley, John, 13, Bouverie Street; and Bridgnorth . . .	M. Haywood Williams, Bridgnorth
Drake, Thomas Edward, jun., Exeter; and Myddleton Square . . .	Thomas Edward Drake, Exeter
Dennis, Thomas John, 5, Maze Pond, Southwark; and Barnstaple . . .	Thomas H. Law, Barnstaple
Dowson, John, 3, Sebbon's Buildings, Islington . . .	William Pringle, King's Road
Dickson, Whinfield P., Portobello Terrace, Notting Hill; and Chancery Lane . . .	John James Jos. Sudlow, jun., Chancery Lane
Duffy, Richard, Nottingham . . .	George Rawson, Nottingham Charles Butlin, Nottingham
Dashwood, Thomas, jun., Sturminster Newton; and Upper Eaton Street . . .	Thomas Dashwood, sen., Sturminster Newton William Dean, Guildford Street
Eastwood, Ab. Greenwood, Halifax . . .	William Eastwood, Todmorden
Edwards, Edmund Butler, Pontypool . . .	Alexander Edwards, Pontypool
Edmunds, Charles Henry, 8, Trevor Square, Knightsbridge . . .	William Sim, King's Bench Walk
Edmonds, Robert Garo, 8, Surrey Place, Old Kent Road; and Plymouth . . .	John Edmonds, Plymouth
Fowler, James, 37, Lower Park Street, Islington; Great Ormond Street; and Birmingham . . .	George Paulson Wragge, Birmingham
Fiske, Edward Brown, 34, Gower Place; and Montpelier Street . . .	Robert Fiske, Beccles R. Ellis Burroughs, Norwich
Fear, Ezekiel Evans, Dorchester . . .	John Garland, Dorchester
Foster, Lambert B., jun., Alfred Place, Blackfriars Road . . .	C. W. Unthank, Norwich
Ford, Henry, 22, Mount Street, Grosvenor Square; and Exeter . . .	John Geare, jun., Exeter John Elliott Fox, Finsbury Circus
Fisher, Charles Hawkins, Stroud; and Greenham . . .	Robert Fuller Graham, Newbury
Fyer, James Joseph, 9, St. Mary Abbott's Terrace; and Grosvenor Street . . .	William Napier Dibb, York James Richardson, York
Fenwick, John Clerevaux, 33, Stanhope St., Queen's Street Place; and Camberwell Grove . . .	John Fenwick, Newcastle-upon-Tyne Hugh Shield, Queen Street, Cheapside
Freston, William Antony, Cirencester; Buckingham Street; and Daglingworth . . .	Charles Lawrence, Cirencester
Gates, Christopher Hill, 36, Sidmouth Street; Grantham; and Frederick Street . . .	George Kewney, Grantham
Gooding, Jonathan Robert, 33, Gower Place; and Norwich . . .	James Winter, Norwich
Girling, Nathaniel, 22, Adelaide Road; and Diss . . .	Thomas Edward Wallis, Diss.
Greenhalgh, James, jun., Bolton-le-Moors . . .	James Cross, Bolton-le-Moors
Gordon, William Pierson, 5, Princess Street, Bedford Row; Shrewsbury; and Featherstone Buildings . . .	Thomas Harley Kough, Shrewsbury E. Boyle Church, Southampton Buildings.
Green, Robert Yeoman, 28, Tavistock Place; and Newcastle-upon-Tyne . . .	Armorer Donkin, Newcastle-upon-Tyne
Gunn, John Thaddeus, 8, Buckingham Street, Strand; Glastonbury; and George St. . .	Robert James, Glastonbury Charles F. Skirrow, Bedford Row
Gabriel, Samuel Hawkes, 37, Queen Square; and Calne . . .	Nicholas Lockyer, Plymouth
Holmes, Whitaker, 88, St. James Street; and Liverpool . . .	William Pritt, Liverpool Thomas Chauntler, Gray's Inn
Heylin, R. Featherstonhaugh, 12, Cumming Street, Pentonville; and Penrith . . .	William Maychell, Penrith.

[The remainder of this List will be given in our next number.]

LEGAL OBITUARY.

1846. Oct. 25, James Malloch, of Southampton Street, Solicitor, admitted in Queen's Bench, Hilary Term, 1820.

Oct. 26. Hutton Monkhouse, of Upper Stamford Street, Blackfriar's Road, Solicitor, admitted in Queen's Bench, Hilary Term, 1826.

Oct. 31. Simon Ewart, of Carlisle, Solicitor, aged 51, admitted in Queen's Bench, Michaelmas Term, 1818.

Nov. 5. John George Graeff, of Furnival's Inn and Berner's Street, Solicitor, aged 38, admitted in Queen's Bench, Michaelmas Term, 1829.

Nov. 13. Thomas Cowper Brown, of King's Bench Walk, Temple, Solicitor, of the firm of Brundrett, Randall, Simmons, and Brown, aged 40, admitted in Queen's Bench, Easter Term, 1829.

Nov. 18. John Evans, of Lincoln's Inn, Barrister-at-Law, aged 50, called to the Bar by the Honourable Society of Gray's Inn, May 6, 1826.

Nov. 17. Jacob Jacobs, of Upper Berkeley Street, Portman Square, Solicitor, aged 77, admitted in Queen's Bench, Easter Term, 1794.

Nov. 19. Cecil Proctor Wortham, of Buntingford, Herts, Solicitor, aged 58, admitted in Queen's Bench, Hilary Term, 1812.

Nov. 20. James Chipchase, of Gray's Inn Road, Solicitor, admitted in Queen's Bench, Hilary Term, 1801.

Nov. 22. William Henry Cross, of Surrey Street, Strand, Solicitor, aged 27, admitted in Exchequer, Michaelmas Term, 1830.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Law of Evidence.

ADMISSION.

On the record.—A declaration against a witness for not attending a trial pursuant to a subpoena, alleged that the plaintiff had a good cause of action in that suit, and that the testimony of the defendant was material evidence for the plaintiff. Plea; 1st, not guilty; 2ndly, that plaintiff could have proceeded to trial without the testimony of the defendant. Evidence was tendered on the part of the defendant at the trial, for the purpose of showing that the plaintiff had not a cause of action in the original suit: *Held*, that as the defendant had not traversed the allegations that the plaintiff had a good cause of action, and that the evidence was material, those allegations were admitted; and that he was consequently estopped from giving the evidence tendered. *Needham v. Fraser*, 3 D. & L. 190.

ATTORNEY.

Conversation.—In the year 1845, and before

ejectment brought, Mr. N. applied to Mr. W., who was afterwards attorney for the defendant in the ejectment, to demand possession of the property, and they had a conversation: *Held*, that on the trial of the ejectment, evidence of this conversation was not receivable; and *semble*, that it being further proved by Mr. S., who received the rents of the property for the defendant, that Mr. W. had been the attorney for the defendant ever since the year 1841, did not render the evidence admissible. *Doe d. Hulin v. Richards*, 2 C. & K. 216.

Cases cited: *Perkins v. Hawkshaw*, 2 Stark. N. P. C. 240; *Young v. Wright*, 1 Camp. 141.

BILL OF EXCHANGE.

1. *Evidence of payment by acceptor.*—The acceptor of a bill of exchange, on its presentation to him when due, did not take it up; but afterwards, on the same day, a person unknown called at the banker's where it lay, and paid the amount, and received back the bill, with a general receipt indorsed upon it. In an action by the indorsee against the acceptor, the bill was produced by the plaintiff, bearing that receipt: *Held*, no evidence of payment of the bill by the acceptor. *Phillips v. Warren*, 14 M. & W. 379.

Cases cited in the judgment: *Scholey v. Walsby*, Peache's N. P. C. 34.

2. *Alteration.*—Stamp, I. O. U.—B., C., D., and E. gave a joint and several promissory note to A. for 200*l.* and interest, as security for a loan to A. On the death of E., B. obtained the note from A. for the purpose of procuring the signature of an additional party; and to secure its return, B. and C. signed the following document:—"I. O. U. Mr. A., the sum of 200*l.*, for value received." The note was returned by B. to A., with the name of F. added, but the I. O. U. was not given up. The alteration was made by the assent of all parties.

Quere, whether the addition of the fifth name was such a material alteration as to avoid the note? Assuming it to be so: *Held*, in an action by A. against B., that inasmuch as the note was free from objection at the time the I. O. U. was given, it was admissible in evidence in support of a count upon an account stated on the I. O. U.

And that A. assenting to a verdict being entered against him upon the count on the note, he was entitled to a verdict for 200*l.* on the account stated, although the particulars of demand merely alleged that the action was brought to recover the amount of the promissory note.

Held, also, that the insertion of the words, "for value received," did not render the I. O. U. liable to a note, or to an agreement, stamp. *Gould v. Combs*, 1 C. B. 543.

Case cited in the judgment: *Catton v. Simpson*, 8 A. & E. 136; 3 N. & P. 248.

And see *Stamp*, 1.

FEIGNED ISSUE.

Property.—Under a feigned issue, brought to try the right of property in certain goods which had been seized under an execution against *A.*: *Held*, that the question for the jury was, not whether the goods were the property of the plaintiff in the feigned issue, or of *A.*, but merely whether they were not the property of the former. *Green v. Rogers*, 2 C. & K. 148.

FRAUDS, STATUTE OF.

Delivery and acceptance of goods.—*A.* gave *B.* a written order for ten firkins of butter, which were to be sent to *A.* by a particular carrier. *B.* sent by that carrier twelve firkins instead of ten. *A.* refused to receive more than ten firkins; and as the carrier could not deliver less than the whole number sent, he refused to take the butter at all. He, however, drew a sample from one of the firkins: *Held*, that under these circumstances, there had been neither an actual nor constructive delivery of the butter to *A.*, and consequently no acceptance thereof by him, so as to satisfy the Statute of Frauds. *Gorman v. Boddy*, 2 C. & K. 145.

HAND-WRITING.

Letters.—*Mr. S.*, the managing clerk of the plaintiff's attorney, wrote a letter to the defendant, addressed to him at his residence, which letter was proved to have been put into the post. *Mr. S.* proved that he received an answer to his letter: *Held*, that the letter thus received in answer was admissible in evidence without proof of the defendant's hand-writing.

It was proved by *Mr. S.* that he received a letter of earlier date, and in the same hand-writing as the letter last before-mentioned: *Held*, that this letter was also admissible in evidence without proof of the defendant's hand-writing: and *Held*, also, that a copy of a letter written by *Mr. S.* of still earlier date, to which the last-mentioned letter was an answer, might be given in evidence (the original not having been produced after a notice to produce) without any proof that the original had been put into the post or had reached the defendant. *Ovenston v. Wilson*, 2 C. & K. 1.

I. O. U.

See *Bill of Exchange*, 2.

LIFE INSURANCE.

See *Suicide*.

MARRIAGE CERTIFICATE.

Semble. Production of a certificate of marriage may be dispensed with on a petition for the transfer of a fund in court, provided evidence of the marriage be given by parties present when the ceremony was performed, and it is supported by other corroborative circumstances. *Bligh v. Bossley*, 32 L. O. 419.

MARRIAGE REGISTER.

The court will not usually dispense with proof from the register of a marriage on an application to have the money paid out of court;

but if the parties are residing in a country in which it is probable registrars have not been kept, the court will, on receiving reasonable evidence to support this conclusion, and an affidavit of a party present when the marriage ceremony was performed, make the order. *Jope v. Pearce*, 32 L. O. 371.

ONUS PROBANDI.

Where order of events is uncertain, which party fails.—In an action against indorser of a bill of exchange, issue was joined as to notice of dishonour. It appeared that a letter containing the notice was put into the post on the day on which the action was commenced, and by the routine of the post-office would reach the defendant between 4 & 5 in the afternoon of that day. No further evidence was given as to the time of notice. The offices of the court were open on y till 5 in the afternoon of the day in question. *Held*, that the plaintiff must fail, it lying on him to show that the right of action was complete before the suit was commenced. *Castrique v. Bernabo*, 6 Q. B. 498.

PARTNER.

Witness.—Where a partner, who had already had a judgment against him, was put into the witness-box to prove the same debt against his co-partner, but it did not appear on the record that he was an interested party: *Held*, that he was a competent witness. *Copper v. Newark*, 2 C. & K. 24.

PRESUMPTION OF DEATH.

Burial certificate.—A certificate of burial may be dispensed with where general evidence of the death is given—the age of the party, if living, would be so great as to afford strong presumptive evidence of his death. *Askew v. Askew*, 32 L. O. 372.

PRESUMPTION OF OWNERSHIP.

Right of one of several defendants to acquittal during trial.—Where the lord of a manor has conveyed land to *A.*, and afterwards other land to *B.*, and it appears that a narrow strip of land passed by one or other of the conveyances, but it is doubtful by which, no presumption arises in favour of *A.* from the fact that the strip of land lies between a highway and land undisputedly comprised in the conveyance to *A.*

Where several defendants to an action of trespass plead guilty, with other pleas, and the plaintiff gives no evidence as against one of them, such defendant is not entitled, as of right, to claim his acquittal before the case for the defence is opened. And per Lord Denman, C. J., the more ordinary practice is not to direct an acquittal till the case on both sides is closed. *White v. Hill*, 6 Q. B. 487.

PRIVILEGED COMMUNICATION.

Negotiation.—*Compromise.*—Where the clerk of plaintiff's attorney went to defendant's attorney for the object of effecting a compromise, and what he said was said with the wish of effecting it: *Held*, that all that passed was privileged, as being a negotiation to bring

about a compromise. *Jardine v. Sheridan*, 2 C. & K. 24.

And see *Attorney*.

RECEIPT.

See *Stamp*, 2.

SECONDARY EVIDENCE.

Proof of possession of the document.—Where notice to produce a document had been given to the defendant, and there was merely evidence to go to the jury that such document was in his possession: *Held*, that the document not having been produced when called for, the plaintiff might give secondary evidence thereof. *Robb v. Starkey*, 2 C. & K. 143.

STAMP.

1. *Order for payment of money.*—*Bill of exchange.*—*J. M.*, by indenture, assigned to the plaintiff a ninth part of his share in the residue of the estate of *T. H.*, deceased. By an order of 29th July, 1842, made in a suit in Chancery of "*Powell v. Norwood*," the Vice-Chancellor ordered the defendants in that suit to retain 250*l.*, being part of the produce of *J. M.*'s share of the residuary estate of *T. H.*, to be paid to such person as the present defendant and *J. M.* should jointly direct. It was afterwards agreed between the parties, that 50*l.*, to be considered as part of the sum of 250*l.*, should be paid by the defendant to the solicitors for *J. M.* and the plaintiff. An action having been brought to recover this sum of 50*l.*, the plaintiff tendered in evidence the following document:—"To the executors of *T. H.*, deceased. *Powell v. Norwood*. Gentlemen.—We do hereby authorize and require you to pay to Mr. George Powell, or his order, the sum of 250*l.*, being the amount directed by the order of the 20th July last, to be paid to our order. We are, gentlemen, your very obedient servants, *J. M.* Dec. 16th, 1842." This document was signed by *J. M.* only, and was unstamped: *Held*, (*Rolfe, B., dissentiente*.) that it was not a bill of exchange, and that it was admissible in evidence without a stamp. *Russell v. Powell*, 14 M. & W. 418.

2. *Receipt.*—The following instrument was tendered by defendant in support of a plea of payment of rent to *M.*:—"Mr. Jones, (defendant,) having written off the sum of 75*l.* from his mortgage debt during five quarters' rent of his house, I hereby discharge the same rent till the 24th day of July, 1841." The instrument was signed by *M.*: the mortgage debt in question was due from *M.* to defendant; and the paper had been delivered by *M.* to defendant as a settlement of account. It was stamped with a 1*l.* stamp, with no denomination, and appearing to have been affixed more than one month after the signing and delivery of the paper: *Held*, inadmissible, as being a receipt within 55 G. 3, c. 184, and consequently not stamped in time. *Lucas v. Jones*, 1 D. & M. 774.

3. *Promissory note.*—A promissory note was as follows:—"An demand I promise to pay *T. H.* or order the sum of 500*l.* for value re-

ceived, with interest at the rate of four per cent., and I have lodged with the said *T. H.* the counterpart leases signed by, &c., for ground let by me to them respectively, as a collateral security for the same 500*l.* and interest to Thorne." In an action by an indorsee against the maker of the above instrument, it was proved to have a promissory note stamp.

Held, that the instrument was properly stamped, and that the latter part of it did not render an additional stamp necessary. *Francourt v. Thorne*, 32 L. O. 518.

4. *License to use patented article.*—*Semble*, a license, under seal, to use a patented article, does not require a stamp. *Chanter v. Johnson*, 14 M. & W. 408.

And see *Bill of Exchange*, 2.

SUICIDE.

Life insurance.—Where a policy of insurance on life contained a condition, that the policy should be void if the assured should "commit suicide," and it was proved that the assured had died from the effects of poison taken by himself: *Held*, that, in order to avoid the policy, it must be shown that the assured, at the time he committed that act, could distinguish between right and wrong, so as to be able to understand and appreciate the nature and quality of the act he was doing. *Schwabe v. Clift*, 2 C. & K. 134.

Case cited by the court: *Borradaile v. Hunter*, 5 M. & G. 660, 668.

The question as to whether a tender was made conditionally or not, is for the jury. *Marsden v. Goode*, 2 C. & K. 133.

TROVER.

Conversion.—*Lien.*—*Part ownership.*—In trover, a demand and a refusal on the ground of a claim of right by a third party, is evidence of a conversion. *Cumee v. Spanton*, 7 M. & G. 903.

Law of Arbitration.

ATTACHMENT.

Action.—Where a cause was referred by judge's order, and the arbitrator directed a verdict to be entered for plaintiff, the order giving him no power so to do, the court refused to set aside the award on motion.

In such a case the court will not enforce the award by attachment, but will leave the party to his remedy by action. *Cock v. Gent*, 3 D. & L. 271.

Cases cited in the judgment: *Jackson v. Clarke*, M'Clel. & Y. 200, S. C. 13 Price, 208; *Doulan v. Brett*, 2 A. & E. 344, S. C. 4 N. & M. 854; *Hawkyard v. Stocks*, 2 D. & L. 936.

CERTIFICATE.

Special jury.—*Costs.*—A cause was referred *ad nisi prius*, and the submission contained a

clause giving the arbitrator the same power to certify as a judge at *nisi prius*; the venue had been originally laid in London, and a special jury had been summoned from that county, but the cause not coming on for trial at the sitting in Middlesex, the parties agreed to change the venue to London, the costs to be costs in the cause. The arbitrator duly made his award in favour of the defendant, and in the following term certified for a special jury: *Held*, that the certificate was of no effect, but that the defendant was entitled to the costs of the London special jury, as costs occasioned by the change of venue. *Geeve v. Gorton*, 31 L. O. 273.

DEFECTIVE AWARD.

When not sufficiently final.—After declaration (in which there were two counts), but before plea, "all matters in difference in the cause" were referred by a judge's order to the award of an accountant, the costs of the cause to abide the event of the award, and the costs of the reference and award to be in the discretion of the arbitrator. The award (not saying that it was made "of and concerning the premises") directed that one party should pay to the other a certain sum, without stating upon what account. *Held*, bad, inasmuch as it was uncertain upon what sum awarded was to be paid, and as there was no finding upon which the costs of the cause could be taxed. *Crosbie v. Holmes*, 31 L. O. 343.

EXAMINING WITNESSES.

Not on oath.—A cause was referred by order of *nisi prius*, which stated that "the arbitrators should be at liberty, if they should think fit, to examine the parties and their respective witnesses upon oath." *Held*, that it was discretionary with the arbitrators whether they would examine the witnesses on oath or not, and that it was no objection to their award that the witnesses were examined without being sworn, although the party against whom the award was made required, at the time, that they should be sworn. *Smith v. Goff*, 14 M. & W. 264, S. C. 3 D. & L. 47.

EXCESS OF AUTHORITY.

Entering verdict.—Where a cause was referred by a judge's order, which gave no express powers to direct a verdict to be entered, but the arbitrators awarded a verdict to be entered with damages and costs; the court discharged a rule which had been obtained to empower the award by attachment, leaving the plaintiff to pursue his remedy by action. *Cock v. Gent*, 14 M. & W. 680.

Case cited in the judgment: *Doulan v. Brett*, 2 Ad. & E. 344.

EXPARTE PROCEEDING

See *Proceeding exparte*.

INFANT.

Costs.—An action of covenant on an apprentice deed having come on for trial, was referred, together with two other actions, in one of which the infant apprentice sued by his next friend;

the costs of the cause to abide the event; and the costs of the reference and award to be in the discretion of the arbitrator. The arbitrator awarded that the verdict in the cause should be entered for the defendant, and that the infant should pay the costs of the reference. *Held*, that the award was good. *Proudfoot v. Boile*, 31 L. O. 393.

NOTES.

The court will not look at the notes of an arbitrator, nor at a copy of them verified either by an affidavit of the arbitrator or his clerk. *Doe d. Hazby v. Preston and another*, 32 L. O. 107.

PROCEEDINGS EXPARTE.

A verdict was taken at *nisi prius* for 3,000*l.* damages, subject to the award of a barrister, to whom all matters in difference in the cause were referred, with power to decide on the admissibility of evidence as a judge at *nisi prius* might, and to reserve points at law for the decision of the court. And there was the usual power to proceed *exparte*, if either of the parties should by affected delay prevent making the award, or should not attend after reasonable notice and without such excuse as the arbitrator should adjudge reasonable.

The arbitrator made a special statement of facts, affecting the admissibility of certain depositions in evidence, and awarded that the verdict should be reduced to 1,358*l.*, if the court should be of opinion that the depositions of A. and B. were admissible; to 1,165*l.* if the court should think the deposition of A. only admissible; and to 579*l.* if the court should think neither of the depositions admissible: *Held*, that the award was final.

The arbitrator having, in the course of the reference (April 28), appointed a meeting for a certain day (May 15), was informed by the defendant that he did not intend to be present, one of his reasons being, that on account of the non-admissibility of certain depositions which the arbitrator had not rejected as evidence, no award he could make would be valid; and another reason being, that the notice was too short. The arbitrator (having postponed the meeting for a day, of which he gave defendant notice, but without reference to defendant's communication), proceeded *exparte*: *Held*, that he was warranted in so doing, though he had not warned the defendant that if he absented himself the arbitration would proceed *exparte*. *Scott v. Van Sandau*, 6 Q. B. 237.

Cases cited in the judgment: *Barton v. Ranson*, 3 M. & W. 322; *Anderson v. Fuller*, 4 M. & W. 470; *In re Wright and Cromford Canal Company*, 1 Q. B. 101.

SETTING AWARD ASIDE.

1. *Time when application can be made.*—A cause was referred by order of *nisi prius*, the arbitrator to have power to state on the face of his award such points of law as either party might require for the opinion of this court. The award was made November 13, 1844, and

on the 16th of the same month notice of the award was given to the defendants. On the fourth day of Hilary Term following a rule *nisi* was obtained by the defendants for setting aside the award and entering a verdict on several issues.

Held, that the application to set aside the award was made too late. That where a cause only is referred to an arbitrator, the same rule prevails in awards as it does in new trials, and that a motion to set aside an award must be made within four days after publication, which period is to be calculated from the time when a party receives notice that the award has been made. *The Queen v. The Great North of England Railway Company*, 32 L. O. 2: 2.

2. *Arbitrator's conduct*.—Award set aside, on the ground of interviews having taken place between the arbitrator and one party in the absence of the other.

Similar misconduct on the part of the person applying will not prevent the court setting aside the award, for the matter concerns the administration of justice.

A motion was made to dismiss a bill, in pursuance of an award; it came on upon the last day on which, under the statute, an application could be made to set aside the award. The respondent then made objections to the award, and the motion was ordered to stand over, with liberty for the respondent to give notice of motion to dispute the award: *Held*, that this operated as an extension of the time. *Harvey v. Shelton*, 7 Bea. 455.

See notes on this case, 32 L. O. 235.

UMPIRE.

On a reference to arbitrators, with power to appoint an umpire to decide between them, in case they should differ in opinion, the arbitrators appointed an umpire, but, no difference arising between them, the umpire was not consulted. In the award the arbitrators recited, that they had "considered the decision of the umpire:" *Held*, that this recital was a mere surplusage. *Harlow v. Read*, 3 D. & L. 203.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Newman v. Ring and others. Nov. 12, 1846.

COSTS.—EQUITY.

A party will not be restrained from recovering such portion of his law costs as may have been incurred in proceeding under a breach of a subsequently dissolved injunction of this court.

THE defendants in this suit had commenced actions against the plaintiff for instalments due under a lease of certain turnpike tolls. An injunction to restrain these proceedings had

been dissolved by the Vice-Chancellor of England, whose judgment was affirmed by the late Chancellor. The defendants had inadvertently committed a breach of this injunction (previously to the same being dissolved) by serving the plaintiff with a declaration in the action to which he (being defendant at law) had pleaded. A verdict having been given against the latter, proceedings were commenced to recover the costs of the action. The plaintiff in equity had refused to pay such of these costs as had accrued subsequently to the serving of the declaration.

Mr. Cooper and Mr. Glasse, for the plaintiff, moved that the defendants might be restrained from recovering the last-mentioned portion of these costs, upon the ground that such had been incurred under a breach of the injunction. There was no reported case in point, and the Vice-Chancellor of England had refused with costs the previous application of the plaintiff.

The Lord Chancellor said, that if this case was to be decided upon principle it would be unnecessary to hear the other side. The court had granted an injunction which it had afterwards dissolved. It was quite clear that there was no equity by which the plaintiff could mulct the defendants in the penalty of any portion of their costs at law, notwithstanding such might have been occasioned by proceedings contrary to an injunction of the Court of Chancery. The court possesses a process of its own by which it is enabled to punish breaches of its orders.

Motion refused with costs.

Rolls Court.

Lassieur v. Tyrconnel. Nov. 12, 1846.

FOREIGN EXECUTOR.

The court will not pay money out of court to the executor of a deceased person appointed such abroad, but not having proved the will in England.

In this case Mr. Craig moved, that a sum of 34l. found to be due to a Mrs. Lassieur, who had died in Geneva, might be paid out of court to the person appointed her executor at Geneva. The object of the application was to save the expense of proving the will in England; this sum being the only property of the deceased in England.

Lord Langdale said, the application could not be granted. There must be some person properly authorized to receive the money here.

Smith v. Smith. Nov. 12, 1846.

76TH ORDER OF 1845.

Form of the order for taking a bill pro confesso, against one of several defendants.

In this case Mr. Glasse moved, that the bill might be taken *pro confesso* against one of several defendants, who was in attachment for want of answer. Notice of the motion had

been served upon the defendant against whom it was made on the 5th of October.

Lord Langdale said, that as there were other defendants, the proper order was that the clerk of records and writs should attend with the bill at the hearing of the cause, for the purpose of its being taken *pro confesso*, and made the order accordingly.

Read v. O'Brien. Nov. 19, 1846.

ORDERS OF 1845.—FOREIGN COMMISSION.

A commission to examine witnesses abroad is not within these orders, which apply only to commissions within the jurisdiction.

Mr. Turner and Mr. Anderson moved for a commission to examine witnesses abroad.

Mr. Teed objected, that under the Orders of May, 1845, (See Orders 91 to 102,) the application ought to be made before the Master; but

Lord Langdale expressed his opinion, that these orders had no application to proceedings out of the jurisdiction, and that therefore the present application was properly made to the court.

Vice-Chancellor of England.

Larpent v. Richmond Railway Company. Nov. 12, 1846.

INJUNCTION.—COSTS.

Where an injunction has been properly obtained, but the purpose for which it was obtained has been answered, the court will not only give the plaintiff the costs of the application for the injunction, but the costs of the suit also.

THE plaintiff in this case having agreed to sell to the defendants certain lands which they intended to use in the formation of their railway, caused an abstract of his title to be delivered in the usual way, which being very long, considerable delay took place in the examination of it. Several communications in consequence took place between the solicitor of the parties relative to the deposit of the purchase money, and on the 5th of March the defendants, finding that they should want possession before the proceedings could be completed, wrote to the plaintiff, offering to make the deposit, but the plaintiff then required the completion of the purchase. On the 10th of March the defendants, without any further communication, took possession of the lands and commenced operations for forming their railway, whereupon the plaintiff's solicitor wrote to the defendants' solicitor, threatening an immediate application for an injunction unless the works were discontinued, and on the 26th of March applied for and obtained an injunction. Notice of motion was given on the part of the defendants to dissolve this injunction, and on the motion coming on for hearing, an arrangement was made for payment of the pur-

chase money and a dissolution of the injunction, and that the court should at a future time determine who should pay the costs of the applications respecting the injunction, as well as the costs of the suit. The purchase money having been paid, the motion for dissolving the injunction was now heard, with the view of determining the question of costs.

Mr. Koe and Mr. Miller for the defendants, urged, that as they had offered to deposit the purchase money, they were justified in taking possession, and that the plaintiff, having allowed the works to proceed till the 26th of March before applying for an injunction, being 16 days after he was apprized of the defendants taking possession, had been guilty of such laches as to disentitle himself to the extraordinary exercise of the court's jurisdiction.

Mr. Belhell and Mr. Fooks for the defendants were not called on to address the court.

The Vice-Chancellor said, there had been no unreasonable delay, and as the contract for purchase expressed that possession should be delivered when the purchase was completed, and the defendants had taken possession without any authority from the plaintiff, the injunction was properly obtained, and the defendants were bound to pay the costs of it; and as the injunction would have been continued till the hearing, if the purchase had not been completed, the defendants ought to pay the costs of the suit also.

Waldo v. Thesiger. Michaelmas Term, 1846.

VENDOR AND PURCHASER.—INTEREST ON PURCHASE MONEY.

When, according to conditions of sale, interest is stipulated to be paid on the purchase money, if the purchase is not completed by a certain day, the purchaser is not liable to pay interest on the amount paid by him for deposit.

A MOTION was made in this cause for leave to pay into court the amount of purchase money of an estate bought under certain conditions of sale, by which it was stipulated that a deposit of 10 per cent. should be paid immediately after the sale, and that the remainder of the purchase money should be paid on the 24th of June last, and that if not paid at that time, the purchaser should pay interest at five per cent. The deposit had been paid into court shortly after it was received, and a question had arisen, whether the purchaser was bound to pay interest on the deposit as well as on the remainder of the purchase money.

Mr. Campbell and Mr. Chapman appeared for the several parties.

The Vice-Chancellor said, that interest was given for delay of payment; and the deposit having been paid, the meaning in this case must be interest on the remainder of the purchase money.

Queen's Bench,

(Before the Four Judges.)

Waring v. Smith, Michaelmas Term, 1846.

PRACTICE. — JURISDICTION. — DISCHARGE OF BANKRUPT, UNDER 5 & 6 VICT. C. 122, s. 42.

Where an application to discharge a bankrupt out of custody under the statute 5 & 6 Vict. c. 122, s. 42, has been refused by a judge at chambers, this court has no jurisdiction to interfere with that decision; but a fresh application may be made to the judge at chambers, if the circumstances of the case will justify it.

Mr. Watson applied for a rule to show cause why the defendant should not be discharged out of prison, under the 5 & 6 Vict. c. 122, s. 42. The defendant was arrested in August, 1845. In June, 1846, a fiat in bankruptcy issued against him, and his certificate was afterwards granted. The granting his certificate was opposed on the ground that he had been guilty of gaming in a manner prohibited by the 38th section of the act. The case was heard before a commissioner of bankrupts at Bristol, and the certificate finally allowed. On these facts a summons was taken out before Mr. Justice Erle, at chambers, to show cause why the defendant should not be discharged out of custody, but the application was opposed by the production of affidavits alleging that he had been guilty of gaming, which the other party not being then prepared to oppose, the summons was discharged. A second application was made to the same learned judge, but he refused to review his former decision. The application was now made on affidavits distinctly denying the charge of gaming, and it was contended that the court would not now inquire into the validity of the certificate, but that the defendant was entitled to his discharge on the production of his certificate, which had been allowed, after argument, by the tribunal which is constituted to inquire into the validity of such instruments. No injury can be done by granting this application, because, if the certificate is void, the debt still remains, and an action can be brought on the judgment. [Coleridge, J. Has this court any jurisdiction to entertain the application? No order has been made by the learned judge at chambers, and the 42nd section says, that it shall be lawful for any judge of the court wherein judgment has been obtained, &c., to discharge such bankrupt. You are now in the same situation as if you were making an original application to this court.] There is an inherent right in this court to entertain the motion, more particularly when the liberty of the subject is concerned.

Cur. adv. vult.

Lord Denman, C. J., after stating the circumstances of the case, said that the court was of opinion that it had no jurisdiction which authorised it to interfere. The 42nd section of the statute did not confer any authority on

the court, but left it wholly with the judge. There was nothing in the statute which prevented the application from being from time to time renewed before the judge. All that the court now decided was, that it had no jurisdiction to interfere with his decision. No opinion was pronounced on the merits of the case, and nothing which now passed was to be understood as preventing any further application to the judge, if the circumstances were such as would justify it.

Rule refused.

Spence v. Mcynell and another. Michaelmas Term, 1846.

TRESPASS AND FALSE IMPRISONMENT. — EVIDENCE. — SPECIAL DAMAGE.

In an action of trespass and false imprisonment, where the plaintiff was committed to prison by the defendants, and expenses were incurred in an unsuccessful attempt by the plaintiff to obtain his discharge by suing out a writ of habeas corpus: Held, that, if these expenses were admissible in estimating the amount of damages, they could only be given in evidence under an allegation of special damage in the declaration.

THIS was an action of trespass and false imprisonment, tried at York before Mr. Baron Rolfe. Plea, not guilty by statute. The declaration was in the usual form, and did not contain any allegation of special damage. The plaintiff was committed to prison for six months by two magistrates of the county of York, for removing goods to prevent a distress. After the plaintiff had been in custody some time, he sued out a writ of habeas corpus, and the validity of the commitment came on to be heard before Coleridge, J.; but previous to that time a fresh detainer had been lodged with the keeper of the prison by the defendants, and the plaintiff was ultimately remanded back to prison. The plaintiff, at the trial, contended, that in estimating the amount of damages, the expenses incurred by him in endeavouring to obtain his discharge ought to be included, but this evidence was rejected, and the plaintiff had a verdict for one farthing damages. A rule nisi for a new trial having been obtained in pursuance of leave reserved by the learned judge,

Mr. Knowles, (with whom was Mr. Bliss,) showed cause, and contended that the evidence was properly rejected. These expenses are in the nature of special damage, and consequently not admissible under the form of this declaration. (Stopped by the Court.)

Mr. Baines and Mr. Hall contra. In point of principle these expenses ought to be admitted. They are expenses necessarily incurred by the plaintiff in endeavouring to obtain his liberty. The rule as to consequential damages is laid down in *Baten's case*. If the

attempt made by the plaintiff to obtain his discharge out of custody had been successful, then there was a wrongful act committed up to a certain time, and the plaintiff was compelled to expend a certain sum of money to prevent being confined much longer. If the attempt was unsuccessful, then the expenses incurred are a measure of damages as showing the value which the plaintiff sets upon his liberty. On either supposition they are a consequence of the act done by the defendants, and should be admitted in evidence to show the injury which the plaintiff has sustained.

Lord Denman, C. J. These expenses may or may not be a consequence resulting from the act committed by the defendants; but I am of opinion that they ought to be stated in the declaration, and then it would be seen whether it was proper evidence.

Coleridge, Wightman, and Erle, J.'s, concurred.

Rule discharged.

Queen's Bench Practice Court.

Bashnell v. Slack. Nov. 16, 1846.

NEW TRIAL.

A rule for judgment as in case of a nonsuit was discharged on a peremptory undertaking to try within two months before the undersheriff: notice of trial was given by the plaintiff to try at a court day to be held by the undersheriff two days before the expiration of the two months, but the undersheriff did not hold any court for the trial of cases on that day: upon this the plaintiff gave a fresh notice of trial to try at a day subsequent to the expiration of the two months, and then tried the cause and obtained a verdict, the defendant not appearing.

Held, that this was irregular, and that the trial must be set aside, with costs. Held, also, that as the court would have enlarged the peremptory undertaking if the plaintiff had come to the court for that purpose, instead of going on to trial, that it would in its discretion do so now.

THIS was a rule obtained by Woolrych, calling on the plaintiff to show cause why judgment as in case of a nonsuit should not be entered against him for not proceeding to trial pursuant to his peremptory undertaking, or why the trial herein should not be set aside on the ground of irregularity. The undertaking had been to try before the undersheriff for Gloucester, within two months, which time expired on the 12th of August, 1846. Notice of trial was given for the 10th of August, on which day it was sworn that the defendant attended with his witnesses, but the plaintiff did not appear. A fresh notice of trial was then served on the defendant for a day subsequent to the expiration of the two months, (which expired on the 12th of August,) but the defendant refused to appear, and at the trial a ver-

dict passed for the plaintiff; damages 6l. Upon this the defendant applied to a judge at chambers, and obtained a stay of proceedings until a motion could be made to the court. A rule having been obtained,

Pashley now showed cause, and contended, first, that the defendant could not support that part of his rule which sought to enter judgment as in case of a nonsuit, for there had been a verdict in this case, which was a state of circumstances never contemplated by the act. [Patteson, J. The defendant can only maintain that part of his motion on the ground that the trial which has taken place was altogether a nullity.] Pashley. That it is submitted is not the case here, for in fact we have complied with our undertaking to the utmost of our power. Our undertaking was to try within two months, to expire on the 12th of August, and in pursuance with this we gave notice to try on the 10th of August, which was the last court day, now we have affidavits to show that the undersheriff did not hold his court on that day in consequence of the assizes for the county being held at Gloucester on that day, so we could not try, and the default it is submitted was not ours, but the act of the officer of the court, and so comes within the authority of *Lumley v. Dubourg*, 14 M. & W. 295. The plaintiff did all that he could under the circumstances, he gave a fresh notice of trial for the next court day. Now this is the same as if the cause had been taken down for trial and then made a remanet, under which circumstances it is clear that judgment as in case of a nonsuit could not be obtained. *Gilbert v. Kirkland* 2 Dowl. 153.

Patteson, J. This is like the case of where a man undertakes to try at the spring assizes, and does not do so until the summer.

Pashley. Yes, but even there I contend the defendant could not have judgment as in case of a nonsuit; whether the court would set aside the trial is another question and quite a separate one. Now, on that point we swear that no court was held by the undersheriff on the 10th of August: we proposed to try on that day, but the sheriff would not. Now this was the act of the court and could not prejudice the party.

Woolrych in support of his rule. It is clear this trial is a nullity, as the plaintiff violated his contract with the court to try within two months. Now here they might have tried on the 17th of July, which was a court day, but they put the matter off to the last moment, so they must take the consequences. The doctrine laid down in *Lumley v. Dubourg* does not apply here, for there the default was especially the act of the court. (Stopped by the court.)

Patteson, J. I think that the plaintiff was not bound to try on the 17th of July, as there was another court day on which he might think to do so within the two months given him by his peremptory undertaking. Still, the trial going off on the 10th of August, he had no right to go on and try at a subsequent day, when the time given him by his peremptory undertaking had expired, but should have

waited, and come here to ask to enlarge his peremptory undertaking, upon the excuse for not trying on that day which he offers here now; the defendant is therefore entitled to set aside this trial, with costs, on the ground of irregularity; but I also think that the plaintiff should have his peremptory undertaking enlarged to enable him to try again within two months.

Rule accordingly.

Common Pleas.

Hinton v. Ackraman. Michaelmas Term, 1846.

JUDGMENT ON DEMURRER. — ISSUES OF FACT. — ENTERING UP FINAL JUDGMENT.

After judgment has been given in favour of the defendant, on demurrer to pleas which go to the whole cause of action, and issues in fact remain to be disposed of, the court will not compel the defendant to enter up final judgment on the record.

Seemly, that where the issues are immaterial, and could in no possible event make any difference, the court will dispense with the trial of them.

IN a former term a rule had been obtained calling upon the defendant to show cause why he should not enter up final judgment of "*quod nil capiat per prece*," to permit of error being brought, or why the plaintiff should not be at liberty to do so on his behalf. The action had been brought on a bond, and several pleas were pleaded by the defendant, all of which were demurred to, except two, and on those issues in fact had been joined. On the pleas demurred to judgment had passed in favour of the plaintiff on some, and for the defendant on others, the latter being a complete defence to the whole cause of action. The issues in fact still remained undisposed of, and the defendant had simply made an entry of judgment on the pleas which the court, on demurrer, had decided in his favour.

Talfourd, Serjeant, now showed cause. It was absurd to ask the defendant to sign final judgment on the record whilst there remained issues in fact undisposed of. The defendant was quite content, having a judgment in his favour, which was a bar to the action, and if the plaintiff required any step to be taken, he must do it on his own responsibility. The case *Tolson v. Kaye*, (in error), 6 Man. & Gr. 589, was an authority to show that in a case like the present the court could not interfere.

Manning, Serjeant, in support of the rule. The doubt here exists in not distinguishing between the state of the law before the 4 & 5 Anne, c. 16, and since. Before that act, although several different claims might have been made, yet more than one answer to each claim could not be pleaded, so that the whole cause might not have been determined by the answers, and therefore final judgment could not be given, *Metcalfe's case*, 11 Rep. 38. In 1 Saund. 80, however, the law on this subject is clearly propounded; it is there said,

that since the statute of Anne, "where several pleas are pleaded, all going to destroy the action, and issues are joined on some, and demurrers to the rest, if the court determine the demurrers in favour of the defendant before the issues are tried they shall not be tried, for judgment of *nil capiat* shall be given against the plaintiff." There are also authorities to show that in case of several issues, where the jury have disposed of the whole cause of action by their verdict on one of such issues, they may be discharged from finding on the others.

Maule, J. Not, I think, since the new rules.

Manning, Serjeant. In *Beckham v. Knight*, 7 Scott, 846; *Carden v. The General Cemetery Company*, 7 Scott, 348, the court, after a judgment on demurrer in favour of the defendant, directed, by consent, issues in fact remaining on the record, to be struck out, for the purpose of having a writ of error sued out. The issues remaining in this case were now wholly immaterial, and without going down to try them unnecessarily, it is submitted the defendant is entitled to have final judgment entered up. The case of *Bourne v. Gutcliffe*, 3 Man. & Gr. 675, is also an authority on this point.

By the Court. The rule laid down in *Williams' Saunders* may be quite correct, and the defendant may have a right in this case to take a judgment of *nil capiat* on the present state of the record, but it does not therefore follow that he can be compelled to do so. It might be, if the court saw that in no possible event any difference could be made, they would dispense with the trial of immaterial issues, but it may be most material to have the issues tried on the other pleas. On the simple ground, therefore, that here there are issues in fact joined, and the court cannot see that it would be perfectly immaterial to try those issues, the rule must be discharged.

Rule discharged with costs.

Exchequer.

Cooke v. Blake. Michaelmas Term, Nov. 19, 1846.

JOINDER IN DEMURRER. — SIMILITER. — ISSUE.

The rule of Hilary Term, 4 Will. 4, c. 108, is qualified and altered by the rule of Hilary Term, 4 Will. 4, c. 3; therefore, where the plaintiff replied by taking issue on some pleas and demurred to others, and added the similiter and joinders in demurrer and delivered the issue: Held, irregular as under the latter rule; the defendant was not bound to join in demurrer until four days after demand.

IN this case the defendant had pleaded several pleas, to some of which the plaintiff replied, and to two of the pleas he demurred specially. The replications concluding to the country the plaintiff added the similiter, and he also added the joinders to the two demurrers, and made up and delivered the issue with notice of trial for the Liverpool assizes. The

defendant struck out the joinders in demurrer and returned the issue. A summons had been taken out at Chambers, upon which the Chief Baron ordered "that the defendant do forthwith join in demurrer, he being at liberty to apply to the judge at Liverpool, on the ground that he could not be prepared to try."

A rule had been obtained, calling on the plaintiff to show cause why that order should not be rescinded, and why the defendant should not be at liberty to amend the pleas demurred to.

Aspinall showed cause. The rule of Hilary Term, 2 W. 4, s. 108, orders, that "in all special pleadings, where the plaintiff takes issue on the defendant's pleading or traverses the same or demurs, so that the defendant is not let in to allege any new matter, the plaintiff may proceed without giving a rule to rejoin. Under that rule the plaintiff was clearly entitled to add the similiter and joinder in demurrer and make up the issue." The question then is, whether the subsequent rule of Hilary Term, 4 W. 4, s. 3, had altered the practice. That rule is, "that no rule for joinder in demurrer shall be required; but the party demurring may demand a joinder in demurrer, and the opposite party shall be bound within four days after such demand to deliver the same, otherwise judgment." The former rule is not affected by the latter. Where a defendant is under terms of rejoining gratis, that is, within twenty-four hours, the plaintiff might nevertheless add the similiter under the rule of Hilary Term, 2 W. 4. The term "rejoining issuably," applies to a demurrer as well as a rejoinder, and would prevent the defendant from demurring specially.

Parke, B. The object of the new rules was to equalise the practice of all the courts. The rule of Hilary Term, 2 W. 4, must be interpreted, with reference to the old rule of the Court of King's Bench, which was, that in all special pleadings the plaintiff might make up the paper book, and consequently he might have added the joinder in demurrer. Subsequently a fresh rule was promulgated, the rule of Hilary Term, 4 W. 4, which controls the former. By that rule no rule for joinder in demurrer is required, but the party demurring may demand a joinder in demurrer, and the opposite party is bound to do so without a rule, but still there must be a demand. The effect is, that the rule of Hilary Term, 4 W. 4, qualifies and alters the rule of Hilary Term, 2 W. 4, and makes a demand necessary. That being so, the plaintiff's proceeding in this case is irregular.

Alderson, B. There is a very good reason why, in the case of a demurrer, the plaintiff should not add a joinder in the same way as in the case of a plea he adds the similiter, for if he did so, he would prevent the other party from amending the pleading demurred to.

Martin appeared to support the rule, but was not called upon.

Rule absolute.

SITTINGS OF THE COURTS.

Master of the Rolls.

HIS Lordship will hear Motions at the Rolls on December 1st and 7th, and will sit in the Judicial Committee, on the 2nd, 3rd, 4th, and 5th December.

Queen's Bench.

LONDON.

Adjournment Day.

Tuesday, December 15, 1846.

TRANSFERRED CAUSES IN CHANCERY.

THE following Causes will be transferred from the Paper of the Vice-Chancellor of England to the Paper of the Vice-Chancellor Knight Bruce, to be heard after the 1st December, 1846, except those cases in which briefs having been delivered to counsel, the parties may desire to have retained in the Court of the Vice-Chancellor of England, of which notice must be given to the Registrar on or before Saturday the 28th November instant.

- { *Adlam v. Barham.*
- { *O'Halloran v. Cohen.*
- { *Beatson v. Beatson.*
- { *Groom v. Stinton.*
- { *Same v. Edmonds.*
- { *Same v. Stinton.*
- { *Same v. Same.*
- { *Wilson v. Williams.*
- { *Gaches v. Warner.*
- { *Same v. Pilkington.*
- { *Tarte v. Phillips.*
- { *Bilton v. Trewheela.*
- { *Mayor, &c. of Rochester v. Lee.*
- { *Pennyfather v. Pennyfather.*
- { *Same v. Same.*
- { *Radeliffe v. Readett.*
- { *Hollis v. Bryant.*
- { *Same v. Same.*
- { *Howard v. Kirk.*
- { *Reddish v. Howard.*
- { *Same v. Lingard.*
- { *Glascott v. Lang.*
- { *Green v. Bailey.*
- { *Straker v. Wilson.*
- { *Bradley v. Teale.*
- { *Smith v. Smith.*
- { *Same v. Same.*
- { *Same v. Same.*
- { *Same v. Roberts.*
- { *Parkin v. Taylor.*
- { *Warde v. Hill.*
- { *Bellringer v. Blagrove.*
- { *Finch v. Secker.*
- { *Crommelin v. Earl of Belfast.*
- { *Cotgreave v. Cotgreave.*
- { *Hemming v. Dingwall.*
- { *Baunister v. Ellis.*
- { *Kortright v. Macqueen.*
- { *Same v. Barlow.*
- { *Rentell v. Scales.*
- { *Gregory v. Wade.*
- { *Hodgson v. Hodgson.*

BUSINESS OF THE COURTS.**Queen's Bench.***Michaelmas Vacation.***CROWN PAPER.—SPECIAL PAPER.—NEW TRIAL PAPER.**

THIS Court will, on Monday the 29th instant, and the five next following days, and on Thursday the 17th day of December next, hold Sittings, and will proceed in disposing of the business in

The Crown Paper ;

The Special Paper ;

The New Trial Paper ;

And in giving judgment in cases which shall then be pending.

PERPETUAL COMMISSIONERS.*Appointed under the Fines and Recoveries Act.*

From Oct. 20th, to Nov. 20th, 1846, both inclusive, with dates when gazetted.

Cox, George, of Bath, for Bath and Somerset. Nov. 3.

Waters, Thomas, of Winchester, for Winchester and Hants. Oct. 23.

MASTERS EXTRAORDINARY IN CHANCERY.

From Oct. 20th, to Nov. 20th, 1846, both inclusive, with dates when gazetted.

Barret, Joseph Morton, Otley. Nov. 3.

Bell, John Penrice, Cheltenham. Oct. 20.

Moore, Walter Henry, Woodbridge. Oct. 30.

Norris, William, Manchester. Nov. 10.

Pratt, James, Wootton Bassett. Nov. 10.

Slack, Edward Francis, Chippenham. Nov. 17.

Stiles, Henry, Northleach. Nov. 17.

Swatman, Edward Lane, Lynn. Nov. 6.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Oct. 20th, to Nov. 20th, 1846, both inclusive, with dates when gazetted.

Bowyer, Henry James Window, and William Freeman, 8, North Street, Cheltenham, Attorneys and Solicitors. Oct. 30.

Brunton, Charles, and Frederick Whiting, 11, New Inn, Strand, Attorneys and Solicitors. Oct. 20.

Dod, Charles, and George Wray, 16, Great Marlborough Street, Attorneys and Solicitors, and French and Foreign Patent and Law Agents. Nov. 3.

Gem, Roger Williams, sen., Roger Williams Gem, jun., and William Docker, Birmingham, Attorneys and Solicitors. Nov. 13.

Malthy, Thomas James, and Alexander Lorent Grant, 10, Broad Street Buildings, Attorneys and Solicitors. Nov. 20.

Taylor, Henry Wilson, and John Speakman, Manchester, Attorneys, Solicitors, and Conveyancers. Nov. 17.

Tynack, Benjamin George, and Thomas Carr Litch, North Shields, Attorneys and Solicitors. Nov. 17.

LAW PROMOTIONS AND APPOINTMENTS.

Charles Buller, Esq., M. P., Judge Advocate-General, has been promoted to the rank of Queen's Council. He was called to the Bar 10th June, 1831, by Lincoln's Inn.

The Queen has been pleased to appoint Charles Douglas Stewart, Esq., to be her Majesty's Solicitor-General for the Island of St. Vincent. Nov. 6.

Mr. Henry Leman, of the Firm of Vizard and Lemans, has been appointed Chief Clerk of Master Brougham, vacant on the death of Mr. Lammin.

THE EDITOR'S LETTER BOX.

A correspondent observes, that in stating the letters on the subject of "conveyancing reform," we have not noticed those which appeared in support of Mr. Stewart's views. We certainly intended to deal fairly with both sides of the question, and will again read over the letters referred to, and if they contain anything material beyond Mr. Stewart's statements, we will again call the attention of our readers to the subject. Perhaps our correspondent will point out the passages he refers to.

"Amicus" asks whether an agreement, (stamped as *such* and *signed only*.) containing the terms of a tenancy, at a fair yearly rent or annual value, will bind the parties for a period not exceeding three years from the day of its date?

The letter on professional charges shall be attended to.

A case came on the last day of Term before the Court of Queen's Bench, in which the Incorporated Law Society had obtained a rule for striking an attorney off the Roll for a fraudulent misrepresentation of his title to property on which he raised money by way of mortgage. The matter occupied the court several hours, and was referred to one of the Masters to take further evidence.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 5, 1846.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

RAILWAY LITIGATION — JUDGMENT OF THE COURT OF EXCHEQUER.

THE doubts entertained and expressed, with regard to the absence of finality in the verdicts obtained against provisional committee-men in railway schemes, have been fully justified by what has occurred during the last fortnight. Within that period, two cases have been argued upon rules for new trials, and the judges of the Court of Exchequer, with the commendable desire of putting an end to the uncertainty which prevailed upon the subject, and of laying down certain principles for the guidance of juries in the numerous cases ready for trial, lost no time in preparing and pronouncing a deliberate judgment in both the cases argued before them. The result is, that in both cases the rules for new trials have been made absolute.*

The most remarkable feature in the discussion on those rules was, the line of argument reported to have been adopted by the Attorney-General, as counsel for one of the defendants; who not only assumed that the verdicts obtained in so many cases against provisional committee-men, were in violation of all legal principle, but broadly stated, that the lamentable miscarriage of justice which had taken place in those cases was owing altogether to the influence of certain leading articles which appeared in the daily press, by

which the minds of juries were so strongly impressed with the idea of the liability of provisional committee-men, that it was only necessary to charge a man with having assumed that character, in order to obtain a verdict against him for any amount. We are not disposed to under-rate the influence of the daily newspapers, or the ability with which they are conducted, but we must be permitted to doubt, whether they are fairly chargeable with misleading juries on this subject, to the extent suggested, and think their imputed success is but an indifferent compliment to the bench as well as the bar. One of the most important functions of a judge presiding at *nisi prius* is, to disabuse the minds of jurors, and to enable them to discern and determine the question at issue, free from all extraneous influences; and advocacy has somewhat retrograded, if the leaders at the bar acknowledge, that they have no chance with juries against the leaders in newspapers. In truth, if the public has been misled, and injustice done in these cases—as we fear it has been—there are other parties besides the newspaper writers, who are fairly open to censure.

Passing from the arguments to the much-talked-of judgment of the Court of Exchequer, in the cases alluded to, although it bears some evidence of hasty preparation, and is remarkable for the total absence of any reference to either case or text-book, yet it may be considered on the whole a satisfactory exposition of the legal principles applicable to the important class of cases under consideration. It does not enable us to determine off-hand whether A or B,

* The report of the judgment, from notes taken expressly for the Legal Observer, will be found at p. 115, post.

who consented to become committee-men of a proposed railway company are personally liable for preliminary expenses; but it enables us to work out the law applicable to the particular facts arising in the cases supposed, and will enable jurors, under the direction of the judges, to give effect to the law by their verdicts. We are far from suggesting that the judgment under review has exhausted the subject—indeed many important principles clearly applicable have neither been touched upon, or referred to in it—but still it is a considerable step in advance towards the ascertainment of the law, bearing upon a class of cases hitherto involved in a sea of uncertainty.

In a short notice, written immediately after the judgment was delivered, we enumerated the main points decided. The judgment is founded upon the assumption, that the doctrines arising out of the Law of Agency are those by which the obligations of provisional committee-men are to be examined and determined. There are some species of agents, whose authority to bind others as an incident of the character they hold, is so well defined and so frequently recognized in courts of justice, as to have become matter of legal intendment and inference. For example, every partner is, from the very nature and character of partnership, in contemplation of law, the general and accredited agent of the partnership; and may consequently bind all the other partners by his acts in all matters within the scope and objects of the partnership. It was suggested, that provisional committee-men in a railway scheme stood in the relation of partners, or *quasi* partners, and therefore, that every committee-man was personally responsible for the acts of his co-committee-men, in all matters relating to the project. The Court of Exchequer has expressly decided, that the relation of partners does not exist between provisional committee-men, and therefore, that the authority arising from the character of a partner cannot be implied. A provisional committee-man, not being a partner, is only liable for debts contracted by him personally, or by his agent properly authorized.

It was pressed upon the court, in the course of the argument, that when a party assented to become a provisional committee-man, he undertook to contribute to the necessary preliminary expenses of the scheme. The court have determined, that an assent to become a provisional committee-man is nothing more than an agreement

to become one of that body, that no agreement to defray preliminary expenses, and no authority to any person to act as the agent of the party, can be implied from such assent. If this part of the judgment shall be sustained, and we see no reason to doubt that it will, the cases which were felt to have pressed with the greatest severity, hardship, and injustice on individuals, are placed on a reasonable and intelligible footing. Country gentlemen and others, who were solicited and assented to lend their names as the patrons of railway schemes, which were alleged to hold out the prospect of advantage to districts with which they were locally connected, will be relieved from the apprehension that by so doing they subjected themselves to unlimited demands, and held their fortunes at the mercy of reckless speculators. No pecuniary liability arises from the consent to become a provisional committee-man *per se*: if anything further has been done or sanctioned, the nature and extent of the responsibility will depend upon and be commensurate with such further act. This, we apprehend, to be the judgment of the Court of Exchequer, and so far it is clear and satisfactory.

Upon the third point on which the court indicated any opinion, namely, the liability consequent upon a party permitting his name to appear in a prospectus as a provisional committee-man, we confess that the judgment appears to us to be inconclusive and unsatisfactory. We think we can detect in the manner in which this part of the subject is treated something like a compromise of the apparently opposite views thrown out by the learned barons in the course of the argument. It may be, that the nature of the subject would not admit of the enunciation of views more definite and decided. Our readers shall judge. The judgment is, that where a party authorises or sanctions the insertion and publication of his name as a provisional committee-man in a prospectus, the inference of law depends upon the particular terms of the prospectus. Where the prospectus contains nothing more than the names of the provisional committee, the responsibility of the several individuals composing the committee is not enlarged by the publication of their names. When the prospectus contains the names of a managing committee, together with the provisional committee, such a prospectus may indicate that the managing body have been appointed to manage the concern to the exclusion of the provisional com-

mittee, or that the managing committee have been appointed by the provisional committee as their agents. So, when the prospectus contains, as these documents did in a great majority of instances, the names of certain persons who were described as secretaries, solicitors, bankers, engineers, and agents, the question arose, whether those officers could be reasonably inferred to have been appointed by the provisional committee to act for them in the various capacities designated in the prospectus? The only solution attempted to be given to this problem in the judgment of the Court of Exchequer is, that "the result must depend upon the particular terms of each prospectus." Now this would seem very like as if the court considerably avoided giving any decided opinion on the question. We apprehend from what followed that there was a conflict of opinion amongst the learned barons. In one of the cases argued before the court, and which was the subject of the judgment, "*Wytl v. Hopkins*," the orders were given by the solicitor who was described as such in a printed prospectus, in which the defendant's name also appeared as a provisional committee-man at his own request. It further appeared, that several days after the publication of the prospectus, the defendant wrote to the secretary, desiring that he should have allotted to him "the full number of 100 shares allotted to provisional committee-men." Upon this state of facts the judgment informs us, that the court entertained much doubt whether there was any evidence that could satisfy, or any evidence that ought to have been left to, the jury. The interpretation we put upon this portion of the judgment is, that the court have not yet come to any determination as to the extent of responsibility which attaches to a provisional committee-man who authorises his name to appear in a prospectus announcing that another person has the character of solicitor; in other words, as we read the judgment, the court doubts whether the solicitor can reasonably be taken to act in that capacity on behalf of the provisional committee-men. This question must be decided at no very distant period. It would be more desirable, perhaps, that it should now have been settled, but we are rather disposed to congratulate our readers upon the advance that has been made to a right understanding of the subject, than to dwell upon what remains to be done.

If the non-liability of provisional committee-men should be established, we apprehend that the next onslaught will be made on the members of managing committees, in those instances where such a body had any existence. Where there is no managing committee, or if the parties who figured in that capacity should be considered, by the decision of competent tribunals, to have incurred no personal responsibility, the question returns upon us, who is to defray the enormous amount of expense incurred in respect of the multitude of abortive projects started in the course of the last year? When goods have been ordered and delivered, and servants retained and employed, who does the law point to as the party liable upon such contracts? We shall not be surprised to find it determined that, in many instances, the only person legally liable is the party with whom the contract was actually made.

"Poets themselves must fall, like those they sung."

It is to be feared that many solicitors who went beyond the scope of their legitimate professional duties, and *bond fide* entered into contracts which they believed themselves authorised to make on behalf of others, will find that they have incurred personal obligations to an extent they could never have contemplated. Should such be the ultimate result, the injury and loss to individuals will be matter to deplore, but to the members of the profession generally, it affords a salutary lesson which it is hoped will not be speedily forgotten.

CONSTRUCTION OF STATUTES.

DEPOSIT OF SECURITY ON REAL PROPERTY FOR DEBT CONTRACTED AT USURIOUS INTEREST.

THE Court of Common Pleas decided, in a case lately reported,* that the proviso in the statute 2 & 3 Vict. c. 37, that nothing therein contained shall extend to the loan or forbearance of any money "upon security of any lands, tenements, or hereditaments, or any right or interest therein," has no retrospective force so as to operate on by-gone transactions.

The question was raised upon a special case, from which it appeared, that in May,

* *Bell and others*, assignees of *Hood v. Coleman*, 2 Com. Bench, 268.

1837, the defendant, Coleman, discounted bills to the amount of 1,000*l.*, bearing the acceptance of the bankrupt Hood, and charged for such discount at the rate of 10*l.* per cent., and in February, 1838, the bills being overdue and unpaid, the assignment of an annuity secured upon real property, was deposited with the defendant, as security for the 1,000*l.* due to him. The bankrupt's acceptances were subsequently renewed several times by the defendant, and on every such renewal he charged at the rate of 10*l.* per cent. for discount. An action of trover was brought by the assignees of the bankrupt to recover back possession of the annuity deed, on the ground that its deposit under the circumstances was void.

The judgment of the court was founded on the consideration, that the original debt upon the bills of exchange was within the protection of the 3 & 4 Will. 4, c. 98, s. 7, which in effect repealed the usury laws in regard to bills of exchange and promissory notes, not having more than three months to run;^b and that as the deposit of the annuity deed was prior to the passing of the 2 & 3 Vict. c. 37, the case was to be decided as if that statute had never passed at all. The deposit of the annuity deed was a deposit by way of security for a debt contracted in a manner not prohibited by law, and was not affected by the subsequent bill transactions.^c Judgment was therefore entered for the defendant.

NOTES ON EQUITY.

SUBSTITUTED PURCHASER UNDER SALE.

THE rules of equity relating to the sale of property under a decree of the court differ in many respects from ordinary sales by auction. The court strictly enforces the equitable rights of parties who place their property under its protection; and, in some circumstances, deal with the persons bidding at such sales almost as if

they were parties to the suit and bound to act with perfect candour and good faith towards each other. Thus, an under-sale, by which the first or immediate purchaser should attempt to gain an increased price of a subsequent purchaser to be substituted in his place, will not be allowed to retain the intended profit; on the contrary, the vendor will be entitled to the whole sum for which the property may be finally conveyed.

Thus, according to the last edition of Mr. Daniel's Chancery Practice, by Mr. Headland, p. 1208, if a purchaser, after becoming the bidder for an estate, is desirous of being discharged from his contract, and of substituting another person in his stead, the court will, on motion, make an order to that effect, but he must support his motion by an affidavit that there is *no under-bargain*, for the new purchaser may give the other a sum of money to stand in his place, and so deceive the court;^a and the rule appears to be, that if a purchaser resell behind the back of the court before his purchase is confirmed, the second purchaser is considered a substituted purchaser, and must pay the additional price into court for the benefit of the estate.^b

In the latest case on the subject reported by Mr. Collyer,^c the facts concisely abridged, were as follow:—

"Certain property comprised in the suit was put up to sale by auction, and one Ross became a bidder for one of the lots, which was knocked down to him for 4,160*l.* He signed an agreement, but a short time afterwards, one Haines stated to the auctioneer, that although Ross had bid for the lot, he, Haines, was the real purchaser, on behalf of one Farrance, and he requested the auctioneer to cancel the signature of Ross to the contract, and allow him, Haines, to sign it as the purchaser for Farrance. Ross not objecting, the auctioneer assented, and accordingly the signature of Ross was, with his permission, cancelled, and Haines then signed the contract as agent for Farrance, and paid a deposit of 832*l.* The plaintiff afterwards discovered, that after Ross had signed the contract, Haines applied to him in the auction-room to know if he was willing to part with his purchase, when, after some negotiation, it was agreed that Ross should allow Haines to become the purchaser

^b The 7 Will. 4, and 1 Vict. c. 80, extends the protection to bills or notes not having more than 12 months to run, and the 2 & 3 Vict. c. 73, s. 1, reciting the last-mentioned act, extends its provisions to "any contract for the loan or forbearance of money above the sum of 10*l.*," with the exception contained in the proviso above referred to.

^c The cases cited in the judgment were *Barrington v. Collis*, 5 N. C. 332; *Connop v. Meaks*, 2 Ad. & E. 326; and *Doe d. Haughton v. King*, 11 M. & W. 333.

^a *Rigby v. Macnamara*, 6 Ves. 515; *Vale v. Davenport*, *ibid.* 615; formerly the practice appears to have been, to make the order on consent of all parties without such affidavit, *Mathews v. Stubbs*, 2 Brown, 391.

^b *Hodder v. Ruffin*, 1 Tamlyn, 341; see also 2 Smith's Chancery Practice, c. 19.

^c *Holroyd v. Wyatt*, 2 Coll. 327.

of the lot, as agent of Farrance, in consideration of his paying Ross 340*l.* beyond the 4,160*l.*, and the 340*l.* was paid to Ross. On these facts the plaintiff presented her petition for relief.

The Vice-Chancellor, in his judgment, said he was not sure that in strictness the court might not have treated Farrance as a purchaser direct from the court at the larger sum, and have disregarded the payment to Ross: but he did not know of any case that had gone that length. He was not prepared to say that there was any moral fraud in the case—anything dishonest, however inaccurate the proceedings may have been. Upon the whole, the ends of justice would be satisfied by directing the property to be resold, reserving the question, whether, if it should not produce so much as 4500*l.*, Farrance should be answerable to the court, and reserving all question of liability in Ross.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

WRECK AND SALVAGE.

9 & 10 VICT., c. 99.

An Act for consolidating and amending the Laws relating to Wreck and Salvage.

[28th August, 1846.]

1. *Commencement of the act.*—Whereas divers acts have been passed through a long series of years for preserving ships and goods stranded or cast on shore, as well as for preventing frauds and depredations on shipowners and others, and for the adjustment of salvage: And whereas it is expedient to consolidate and amend the same: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That this act shall come into operation on the passing thereof as to the appointment of the officers hereby authorized, and the posting of their names, and as to the other parts thereof on the first day of October, 1846.

2. Recited acts repealed, viz.: 12 Anne, st. 2, c. 18; 4 Geo. 1, c. 12; 26 Geo. 2, c. 19; 49 Geo. 3, c. 122; 53 Geo. 3, c. 87; 53 Geo. 3, c. 140; 1 & 2 Geo. 4, c. 75; 3 & 4 Vict. c. 65, s. 5; 8 & 9 Vict. c. 86; 4 G. 1, c. 4; 11 G. 2, c. 9; 17 G. 2, c. 11; 23 & 24 G. 3, c. 48.

3. That for the purpose of carrying the provisions of this act into effect, the Receiver-General of Droits of Admiralty may from time to time appoint persons to act under him, to be styled "Receivers of Droits of Admiralty;" and in the construction of this act the word "receivers" shall mean Receivers of Droits of Admiralty; and such receivers shall hold their

offices during the pleasure of the Receiver-General and the pleasure of the Commissioners of Admiralty; and the said receivers shall be entitled to the fees herein-after mentioned, together with a further remuneration, to be defrayed out of the proceeds of sales of droits made by them, at the rate of 5*l.* for every 100*l.*, after abating the charges and expenses incurred by them; and the said Receiver-General shall send a list containing the names of such receivers, with their respective addresses, to the collectors of her Majesty's customs at the different ports of England and Wales and Ireland, and also to the secretary of the committee for managing the affairs of Lloyd's in the city of London; and the said collectors and secretary respectively shall cause the said list to be affixed in a conspicuous place in the custom houses in the said ports and at Lloyd's aforesaid respectively: Provided always, that all the provisions contained in this act having reference to the said receivers, whether as to their style, office, powers, duties, remuneration, or otherwise, or as to the posting of their names, shall in all respects be applicable to those persons who shall at the time of the passing of this act have been appointed agents to the said Receiver-General of Droits of Admiralty, in as full and ample a manner as if the said agents had been appointed receivers under this act; and all appointments in writing of agents or receivers by the Receiver-General of Droits of Admiralty, heretofore or which may be hereafter made, are hereby declared to be exempt from stamp duty.

4. That every lord or lady of any manor, or patentee or grantee of the crown, or other person or body corporate who may be entitled to or claim to be entitled to wreck of the sea, or to any goods found jetsam, flotsam, lagan, or derelict, shall deliver, or send by the general post or otherwise, a notice in writing, setting forth such claim, to such one of the receivers respectively whose residence shall be within or nearest to the said manor or other district in which such claim is made; and that no such lord or lady of any manor aforesaid, patentee or grantee of the crown, nor any other person or body corporate, shall be considered as possessing such title, or be able to enforce the same at law or in equity, until such notice shall have been so given as aforesaid: Provided always, that where two or more notices shall be given claiming the same rights the party who shall adduce to the receiver evidence of his having enjoyed such rights, or if both parties shall adduce evidence thereof, then the party who shall appear to the receiver to have been last in the enjoyment of such rights, shall be considered as the party entitled, until such conflicting claims shall have been finally determined at law or in equity; and unless such evidence shall be adduced by one of the said parties, such receivers, being in possession of such wreck of the sea, or goods jetsam, flotsam, lagan, or derelict, shall not deliver the same, except to the original owner thereof, until such conflicting claims shall have been determined as aforesaid.

5. That all persons whomsoever who shall find, take up, or be in possession of any wreck of the sea, or any goods jetsam, flotsam, lagan, or derelict, or any boat, vessel, apparel, anchor, cable, tackle, stores, or materials, or any goods, merchandize, or other article whatsoever, which shall have been found floating or sunk at sea, or elsewhere in any tidal water, or cast, thrown, or stranded upon the shore, and whether the same be found above or below high-water mark, and whether wholly on land or wholly in the water, or partly on land, and partly in the water, or shall find or take possession of any droit of admiralty of any description, whether such person shall claim to be entitled to such article or droit or not, shall forthwith send to the receiver or to the collector or comptroller of customs at the port or place nearest to which such articles or droits have been found a report in writing of all such articles or droits so found, containing an accurate and particular description of the marks (if any) thereon, and of the time and situation when and where the same were found, and shall also forthwith place such articles or droits at the disposal of the said receiver or officer of the customs; and every officer of the customs receiving such report shall forthwith transmit the same to the nearest receiver; and every person who shall keep possession of or retain, or conceal or secrete, any such wreck of the sea, jetsam, flotsam, lagan, derelict, boat, vessel, apparel, anchor, cable, tackle, stores, materials, goods, merchandize, or other article as aforesaid, or shall de-face, take out, or obliterate any name, mark, or number thereon, or alter the same in any manner, or shall keep possession of or retain, or conceal or dispose of any droit of admiralty, or shall not forthwith report and place at the disposal of such receiver or officer of the customs any such article or droit in the manner aforesaid, shall forfeit all claim to salvage, and shall on conviction forfeit any sum not exceeding 100*l.* and also forfeit and pay double the value of the articles to the owner thereof if claimed, or to her Majesty, if the same become or be a droit of admiralty; which double value may be recovered in the same manner as a penalty under this act.

6. Receivers and officers of customs may by warrant seize goods not reported or delivered, who shall be entitled to salvage. Informer entitled to such reward as receiver-general shall allow.

7. Receivers to send to principal officer of customs at nearest port a report of goods reported or seized, when they amount to 20*l.* in value; a copy of the report to be posted at Lloyd's.

8. Receivers to give notice to lords of manors, &c., of the finding of wreck claimed by them.

9. That if the rightful owner of any article which has been so reported to or seized by any receiver as hereinbefore directed shall make out his claim to the said article, to the satisfaction of the said receiver, within the period of twelve calendar months from the day on which

such article shall have been so reported to or seized by the said receiver, such article shall be restored to the said owner, on payment of the duties and necessary charges attending the care or removal of the same, and a reasonable compensation for salvage thereof, and also on payment to the said receiver of a sum after the rate of five per centum on the value of the article, but in no case, whatever may be the value of the articles, shall such per-centage exceed 50*l.*

10. Wreck, &c., not being claimed by the owner within twelve months, lords of manors, &c., may make good their claim within one month following.

11. Wreck, &c., not claimed either by owner or lord of the manor to be sold as droits of admiralty. Goods deemed perishable or of small value, may be sold immediately.

12. Vice-admirals of counties, &c., not to interfere with wreck, &c.

13. Where salvage insufficient, Lords of Treasury, on application by receiver-general or lord warden of Cinque Ports, may allow a sum for salvage.

14. Receivers, justices, &c., or custom-house officers, when any ship or vessel shall be in distress, empowered to summon men and ships to assist them. Penalty for refusal.

15. That for the prevention of confusion among persons assembled to save any ship or vessel in distress as aforesaid, or any of the goods or effects belonging thereto, all persons so assembled shall conform, in the first place, to the orders of the master or owner or officer in charge of the said ship or vessel in distress, and in the next place to those of the receiver, and for want of their presence to those of the officers hereinafter mentioned, in the following subordination, as any of such officers shall be present; (that is to say,) first the officers of customs or coast guard, then those of the excise, then of the sheriff or his deputy, then any justice of the peace, then any mayor or chief magistrate of any corporation, then any coroner, then any chief constable, then any petty constable or peace officer; and any person whomsoever acting knowingly or wilfully contrary to such orders shall, on conviction before one justice of the peace, forfeit and pay any sum not exceeding 50*l.*

16. Examination on oath of ship's name, cargo, &c., before receiver, and a copy to be sent to receiver-general. Receiver entitled to 1*l.* for every examination. Persons refusing to be examined to forfeit 50*l.*

17. Carriages allowed to pass over the lands near the coast for the preservation of wreck, &c. Compensation to land occupiers to be settled in the same manner as salvage.

18. Penalty on land occupiers refusing to allow carriages, &c., to pass over their lands.

19. Reasonable salvage to be allowed to persons saving ships or goods. Proviso.

20. Receiver-General may make rules for regulating salvage in certain cases.

21. That if any person shall have rendered any service (except ordinary pilotage) in the

saving or preserving of any ship or vessel in distress, or of the cargo thereof, or of the life of any person on board the same, or of any wreck of the sea, goods or other article hereinbefore mentioned, which shall not become droits of admiralty, and the said person, and the master or owner of such ship or vessel, or his agent, or the owner of such article, or his agent, cannot agree upon the amount of salvage or compensation to be paid in respect of such service, then such person shall deliver to such master, owner, or agent a statement in writing, without prejudice to either party, of the amount of salvage or compensation claimed for such services, and (unless such salvage shall have been already paid by any receiver under the powers hereinbefore contained, or the claim thereto shall exceed the sum of 200*l.*) the matter or difference may be determined by any two justices of the peace residing at or near to the place where such service has been rendered, within forty-eight hours after such difference shall be referred to them for their determination thereof, and if they cannot agree respecting the same, then it shall be lawful for them to nominate any third person conversant in maritime affairs, at their option, who shall ascertain the amount of salvage to be paid within forty-eight hours after he shall be so nominated as aforesaid; and the said justices and such third person so nominated as aforesaid shall have full power and authority, whenever they see occasion, to examine the parties or their witnesses upon oath, which oath they or any one of them are and is hereby authorized to administer; and it shall be lawful for the person so to be nominated by the said justices, who shall decide on the amount of salvage to be paid as aforesaid, to demand and receive of and from the owner of the ship or vessel aforesaid, or of the article so saved as aforesaid, or of the salvors or their respective agents, a sum of money not exceeding 2*l.* 2*s.*; and such owner or his agent, or such salvors, at the discretion of the said justices or person appointed by them as aforesaid, are hereby required to pay the same to the person so nominated as aforesaid immediately after he shall have made his award or decision, and such sum of 2*l.* 2*s.*, and such amount of salvage, may be recovered as any penalty imposed by this act: Provided always, that when the salvage claim shall exceed the sum of 200*l.*, then and in every such case, the said matter or difference shall, in the event of no such agreement being made as aforesaid, either by reference to arbitration or otherwise, be determined exclusively by the High Court of Admiralty.

22. Admiralty may appoint salvage commissioners to determine differences where they think fit, and appoint a secretary, &c. Commissioners empowered to examine on oath.

23. That in case any person so claiming to be entitled to salvage or compensation for services rendered as aforesaid, or the person against whom such claim is made, or his agent, shall be dissatisfied with such award and decision of the said justices or person so to be

nominated by them as aforesaid, or of the said commissioners of salvage, it shall be lawful for either of them respectively, within ten days after such award shall have been made, but not afterwards, to notify to such justices, or to the said commissioners of salvage, as the case may be, his desire of obtaining the judgment of the High Court of Admiralty respecting the said salvage or compensation, and thereupon such person shall forthwith proceed by taking out a monition within thirty days from the date of such award: *but in such case the receiver or officer of the customs in whose custody, the ship, vessel, goods, or other article in respect of which such claim of salvage has been made shall have been detained as aforesaid, is hereby required and empowered to release such ship or vessel, and to deliver to the owner or proprietor, or his agent, such goods or other article, upon the said owner or proprietor or his agent giving good and sufficient bail in double the amount of the sum awarded for salvage or compensation, or if no sum shall have been so awarded, then to such amount as the said receiver shall deem sufficient, and which bail the said receiver is hereby authorized to take and certify according to the form contained in the schedule (A.) hereunto annexed, and transmit the same without delay to the said receiver-general, together with a true certificate in writing of the gross value of the article respecting which salvage shall be claimed, and also a copy of such proceedings and award, on unstamped paper, certified under the hand of the said receiver taking such bail as aforesaid, and the same shall be admitted by the said Court of Admiralty as evidence in the cause; and the said receiver shall for every such certificate be entitled to receive from the owner of such ship or vessel, goods or other article, or his agents, or from the proceeds of the sale thereof, the sum of 1*l.* 1*s.*

24. Receiver, where award by commissioners of salvage has been made, empowered to sell ship or goods, &c., in case of refusal of owner to comply with terms of award, or of neglect to appeal.

25. That whenever any sum to be paid for such service as aforesaid, either voluntarily or in consequence of any agreement, or of any arbitration, or of any award made by any such justices or by the said commissioners of salvage as aforesaid, or, within the jurisdiction of the Cinque Ports, by any commissioners, shall be distributable between two or more persons, such sum shall be paid to such person as shall be appointed by the justices or commissioners in and by their award, or by the arbitrator making any award, or under any agreement which may have been made, or in default of any such appointment, then to the master or owner of the boat, ship, or vessel having rendered the services, or his agent, or to some person nominated in writing by or on behalf of the majority of the persons among whom such sum is distributable; and every person to whom any such sum shall be paid shall, within three days after the same shall have been paid,

or as soon after as may be, proceed to make allotment thereof among the several persons interested in the distribution thereof, and to give notice in the form contained in the schedule (B.) to this act annexed to each person of the whole sum so paid, and of the share thereof allotted to him; and within 30 days after the sum shall have been so paid, or within 28 days after such notice shall have been given, and not afterwards, it shall be lawful for any person claiming a share of the said sum who shall think himself aggrieved, either by no allotment having been made, or by no notice thereof having been given to him within 10 days after the sum shall have been so paid, or by the insufficiency of the share allotted to him, or otherwise, to apply, if the share so allotted, or, if no share shall be so allotted, then if the share claimed by him shall be under 20*l.*, to the justices or commissioners who may have determined such salvage case, or within whose jurisdiction such salvage case may have occurred, who shall have full power to adjudge the due distribution of the sum so paid as aforesaid, and the shares of the different parties entitled thereto, which shares may then be recovered from the person to whom such sum shall have been so paid, in like manner as is hereby provided for the recovery of any penalty under this act; and if the share which shall be so allotted, or, if no share has been allotted, which shall be so claimed by the person so thinking himself aggrieved as aforesaid, shall amount to 20*l.*, then it shall be lawful for such person, within the said term of 30 days or the said term of 28 days (but not afterwards), to apply to the judge of the High Court of Admiralty, or his surrogate, for a monition against the person to whom the said sum has been so paid as aforesaid, to bring the said sum or any part thereof which shall appear not to have been duly distributed into the registry of the said court, and appear, and abide the judgment of the said court concerning the distribution thereof; and the judge of the said court, or his surrogate, shall, on due cause shown, issue such monition, and the said court shall have jurisdiction to enforce the same, and to adjudge the due distribution of such sum accordingly; and in the case of an award the person by whom such award shall have been made shall, upon monition, send in without delay to the said court a copy of the proceedings before him, and of the award, on unstamped paper, witnessed under his hand, and the same shall be admitted by the court as evidence in the cause; and the amount so awarded, or such part as shall appear not to have been duly distributed, shall be paid to the parties suing out such monition, or distributed according to the judgment of the said court.

26. After sum awarded for salvage services shall have been paid, persons feeling aggrieved by insufficiency of share precluded from enforcing claim against ship, &c., to which services were rendered.

27. Account of sums received for salvage to be sent to receiver, and by him to receiver-general.

28. Persons cutting away or defacing buoy ropes deemed guilty of felony.

29. Persons fraudulently purchasing anchors, &c. to be considered receivers of stolen goods.

30. Masters of ships finding vessels, anchors, &c. to make entry in log book, and to report to receiver-general, and on their return or arrival to deliver the articles to the nearest receiver. Articles to be reported by receiver, and if not claimed to be sold. Penalty on defaulters, 100*l.*

31. Pilots and others selling vessels, anchors, &c. in foreign countries guilty of felony.

32. Penalty on dealers in marine stores not having their names on their store-houses, or cutting up cables without a permit from a receiver.

33. Penalty on dealers in marine stores purchasing anchors, &c. from persons under 14 years of age.

34. Dealers to keep an account of old stores bought, to advertise before cutting up cordage, and to allow an inspection of their books. Penalty for neglect or refusal.

35. Manufacturers to place marks on anchors and kedge anchors. Penalty for neglect.

36. That any penalty imposed by this act may be recovered by information or action of debt in any of her Majesty's courts, or by information or complaint before any justice of the peace or magistrate of any jurisdiction residing near the place in which the offence has been committed for which such penalty is sought to be recovered, or where the offender may at any time happen to be, and (except where the contrary is so expressed) one half of the said penalties shall go to the informer, and the other half to the receiver-general of droits of admiralty, to be applied by him in like manner as the proceeds arising from such droits, any thing in an act passed in the 5 & 6 Will. 4, c. 76, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or in any other act of parliament, to the contrary notwithstanding; and in case any of the said penalties, on conviction by any justice of the peace or magistrate, shall not be paid, with the charges incident to the conviction, immediately upon such conviction, the same shall and may (except in the case herein-after mentioned) be levied, by warrant under the hand and seal of such justice or magistrate, upon the goods and chattels of any such offender; and in case no sufficient distress shall be found, then every such offender shall and may be committed by any justice or magistrate as aforesaid to gaol, with or without hard labour, in case of any first offence for any period not exceeding six calendar months, and in case of any second or further offence for any period not exceeding 12 calendar months, unless the said penalty and the charges shall be sooner paid.

Form of conviction.

37. That it shall be lawful for any person so convicted by any justice of the peace or magistrate before-mentioned of any offence against this act, within three calendar months next after such conviction to appeal to the justices of the

peace assembled at the general quarter sessions holden for the county, city, or place where the matter of appeal shall arise, first giving ten days notice of such appeal to such justice of the peace or magistrate, and of the matter thereof, and entering into a recognizance before some justice of the peace for such county, city, or place, with two sufficient sureties, conditioned to try such appeal, and for abiding the determination of the court therein; and such justices at the general quarter sessions shall, upon due proof of such notice having been given and recognizances entered into, hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party, as to them shall seem just and reasonable; and the decision of the said justices therein shall be final, binding, and conclusive; and no proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form only, or be removed by certiorari, or any other writ or process whatsoever, into any of her Majesty's courts at Westminster or elsewhere; any law or statute to the contrary in anywise notwithstanding.

38. Offences to be tried in the county where committed, or where offender resides.

39. Goods saved from vessels wrecked to be forwarded to the ports of their original destination.

40. That the High Court of Admiralty shall have jurisdiction to decide, in manner hereinbefore mentioned, upon all claims and demands whatsoever in the nature of salvage for services performed, except in cases of goods hereinbefore directed to be sold as droits of admiralty, whether in the case of ships or vessels, or of any goods or articles found either at sea or cast upon the shore, and whether such services shall have been performed upon the high seas or within the body of any county, anything in any act contained to the contrary notwithstanding.

41. In case of damage done by a foreign vessel, a judge may order its arrest, unless owner undertake to appear in an action.

42. Serjeants and deputy serjeants of the Cinque Ports to have the same powers and liable to the same duties as receivers.

43. Reservation of rights of the Lord Warden and of the Cinque Ports. Act not to interfere with the 1 & 2 G. 4, c. 76.

44. In case of vessels wrecked being plundered by a tumultuous assemblage, the hundred to be liable for damages. 7 & 8 G. 4, c. 31. 3 & 4 W. 4, c. 37.

45. Penalty on persons wrongfully carrying off wreck, or boarding ships without leave, or hindering the saving of ships or goods. Masters of ships may repel unauthorized persons boarding them. Nothing herein to be construed to repeal or affect 7 W. 4, & 1 Vict. c. 97, s. 8.

46. Nothing herein to alter or repeal the recited acts following:—6 G. 4, c. 125; 7 & 8 G. 4, c. 29; 9 G. 4, c. 55; 6 & 7 Vict. c. 79; 32 G. 3, c. 35.

47. Reservation of rights of the Crown, of the High Court of Admiralty, and Admiralty of the Cinque Ports.

48. Reservation of rights of the Trinity Houses of Deptford, Stroud, Hull, Newcastle, and of the Humber Commissioners.

49. Reservation of the rights of the city of London.

50. Act not to extend to Scotland.

51. Interpretation of act.

52. Act may be amended, &c.

SELECTIONS FROM CORRESPONDENCE.

CHURCH ALTERATIONS—POWER OF INCUMBENT.

SIR,—Can any of your readers inform me whether an organ standing in the gallery in the nave of a church, can be legally removed from thence and fixed in the chancel; and whether stalls for choristers and a screen, between the church and nave, can be legally erected, at the sole instance and will of the incumbent, or, perhaps with the implied consent of the churchwardens? Or, whether it is not requisite that a meeting of the parishioners be convened, and on their consenting to the alteration, a faculty or authority be obtained from the ordinary.

LAICUS.

CHEAP LAW.

MR. EDITOR,—I think if one of the attorneys for the new courts was, (as they do in the back parts of the United States for 5s. a debt.) to contract with a petty tradesman to get in a list of debts at that sum; he might issue a public hand-bill, that A. B., collector of debts, having agreed to collect the under-mentioned debts due to Mr. —, of —, requests the debtors to pay him at his office at — in a week.

List of Debts.

E. F. of —, 5l. 10s. due 1800.

G. H. of —, 2l. 0s. due 1843.

&c. &c. &c.

N. B.—Those who have short memories will be prosecuted with the utmost severity.

Q.

ADVANTAGE OF SUPERIOR COURTS.

Whatever merit English jurisprudence may possess in a scientific point of view, is owing to the centralization of the courts, "which has been able to maintain," says a celebrated continental jurist, Meyer des Institutions judiciaires, "that famous common law," to which all the English jurists appeal, and which, without existing anywhere, without being deposited in any collection, has directed with unvarying firmness on all the great points of civil right—the decisions of the English courts for many centuries.—*Edin. Rev.* 1846, No. 170, p. 404.

ATTORNEYS TO BE ADMITTED,

Hilary Term, 1847.

Queen's Bench.

[Concluded from p. 85, ante.]

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Howard, Alfred George, 2, Eccleston Square, Pimlico	Thomas Rhodes, Davies Street
Haddock, Thomas, 59, Albert Street, Mornington Crescent; Prescott and Sutton; and Clarence Road.	John Bishop, Lincoln's Inn Fields
Hewson, Frederick, Balham Hill; and Wrington	William Rowson, Prescott
Hallward, Charles Berners, 151, Albany St., Regent's Park; and Sweptstone Rectory	Bryan Holme, New Inn
How, Thomas Maynard, 59, Lincoln's Inn Fields; Shrewsbury; and York Street	John James, Wrington
Hibbit, Henry, 8, New Inn; and Canterbury Street	John Thomas Ambrose, Mistley
Hitch, Jno. Wortham Arnott, 8, Adelaide Road; Haverstock Hill; and Melbourne	Edward T. Cardale, Bedford Row
Hore, Edward Madge, 6, Lincoln's Inn Fields	William Wybergh How, Shrewsbury
Jones, Hugh, Carnarvon	Alfred Bell, Lincoln's Inn Fields
Jones, William, 6, Wells Street; Gray's Inn Road; Swansea; and Carmarthen	Joseph Hockley, Guildford
Joachim, Bristow, 34, Gower Place; Lowestoft; and Park Street	William Richard Sumpter, Cambridge
James, John Crymes, Haverfordwest	James Hore, Lincoln's Inn Fields
James, Philip Frederick, 18, Gerrard Street, Islington; and Thavies Inn	C. F. Hore, Lincoln's Inn Fields
Ingram, Frederick, 15, Ely Place; and Dorchester	William Lloyd Roberts, Carnarvon
Jennings, William, Carlisle; Cockermouth; and Fellside	Henry Griffith Jones, Carmarthen
Johnson, Frederick Augustus, Margate	Edward Norton, Lowestoft
King, John Algernon, Grantham	M. Rice James, Haverfordwest
Knuckey, Francis Burdett, 41, Wilmington Square	F. Lewis Bodenham, Hereford
Knipe, Francis, Cheltenham; Gower Place; and Pierpoint Street	Francis Ingram, Dorchester
Lawrance, John William, 15, Marchmont Street; and Peterborough	Silas Saul, Carlisle
Lewis, Charles Edward, 65, Upper Stamford Street, Lambeth; and Hampstead	Jas. Plucknett, Lincoln's Inn Fields
Lloyd, Cornelius, 12, Grenville Street; and Abergavenny	Jno. Poore King, Grantham
Leakey, James Shirley, 80, Lombard Street; and Plymouth	Edward Willan, Bedford Row
Lloyd, Alexander Evan, Chester; and Burton Street	George Selby, St. John's Street Road
Lock, Henry, 22, St. Thomas Street East; and Barnstaple	Jno. Williams Knipe, Worcester
Lovegrove, Joseph, Gloucester	Wm. Lawrence, Peterborough
Marsland, George, jun., 65, Milton Street, Dorset Square; Shrewsbury; and Margaret Street	Henry Compigne, 24, Bucklersbury
Maule, Edward, 10, New Ormond Street	Edw. Lloyd Powell, Abergavenny
Malleon, John Nesbitt, Wimbledon Common	Jas. W. Arundell, late of South Square
Molineux, Joseph, Cordwainers' Hall; and Queen Square	Herbert Mends Gibson, Plymouth
	David Williams, Pwllhelia
	A. W. Irwin, Verulam Buildings
	Chas. Wm. Potts, Chester
	Thomas Hooper Law, Barnstaple
	Jno. Lovegrove, Gloucester
	Hy. Hicks, Shrewsbury
	George Frederick Maule, Huntingdon
	William Hy. Trinder, John Street
	Geo. Fredk. Prince Sutton, Basinghall Street
	George Philcox Hill, Brighton

Mayhew, John, Wigan; and Waltham Abbey	Joseph Jessopp, Waltham Abbey
Mears, St. John John, Bagshot; and Kenton Street	John Mears, Bagshot
Maddock, Charles, 59, Lincoln's Inn Fields; and Brunswick Row	Alfred Bell, Lincoln's Inn Fields
Orford, John, 4, Liverpool Street, Gray's Inn Road; and Ipswich	Simon Batley Jackaman, Ipswich
Oldham, Edwin, Stockport; and Wellington Road North	William Woollam, Stockport
Oliver, James, 4, Lansdowne Terrace, Notting Hill	Septimus Davidson, Weavers' Hall
Phillips, John, Low Crosby, near Carlisle	John Saul, Carlisle
Powell, Frederick, 20, Newman Street, Oxford Street	Samuel Powell, jun., Knaresborough
Philby, Henry Adams, 29, Jewry Street, Aldgate; and Loughton	Charles Lever, King's Road
Poole, Henry Davis, 5, Canonbury Place, Islington	Henry Aston, New Broad Street
Phillips, William, Kingston-upon-Thames	Robert Henry Sawyer, Staple Inn
Powell, James, jun., 19, Chenies Street, Bedford Square; and Chichester	William Sowton, Chichester
Payne, Edward Turner, North Hill, Highgate; Bath; Harpur Street; and Lloyd Square	James Powell, Chichester
Pemberton, Stephen John, 18, Great Ormond Street; and Hexham	Henry Hayman, Bath
Percival, Arthur, 8, Arthur Street, Gray's Inn Road; and Stamford	Thomas Johnson, late of Hexham
Phillips, William, 23, River Street, Myddleton Square; Birmingham; and Boxworth Grove	Richard Gibson, Hexham
Pollard, George Octavius, 41, Dorset Street, Portman Square	Thomas Hippiusley Jackson, Stamford
Penfold, William John, 1, Gibson Square, Islington	Julius Partridge, Birmingham
Porter, George Twynan, Winchester	John Allan Powell, New Square
Platt, Edward John, 3, New Ormond Street; Bedford; and Great Percy Street	Messrs. Attree, Somers, Clarke, and John Sidney M'Whinnie, Brighton
Pratt, John Forster, Berwick-upon-Tweed; Alfred Street; Everett Street; and Arthur Street	George Twynan, Winchester
Partridge, Joseph Arthur, 10, Bedford Street; Mount Vernon; and Egremont Place	Theed Pearse, jun., Bedford
Phillips, Joseph, jun., Stamford; and Millman Street	Robert Weddell, Berwick-upon-Tweed
Palmer, Cadwallader Edwards, jun., 7, Harpur Street; Barnstaple; and Upper George Street	George Edwards, Stroud
Richardson, Martin, jun., York	Richard Newcomb Thompson, Stamford
Richardson, Henry Marriott, Bolton-le-Moors	Joseph Francis Kingdon, Barnstaple
Read, James, jun., Mildenhall	C. E. Palmer, sen., Barnstaple
Robinson, Henry, Settle; and Kirkby Lonsdale	Martin Richardson, sen., Harrogate
Rogers, Edward John Boulderson, 6, Great Ryder Street, St. James; and Truro	James Winder, Bolton-le-Moors
Roose, Francis, 33, Upper Montague Street	James Read, sen., Mildenhall
Selby, Francis Thomas, Spalding	Francis Pearson, Kirkby Lonsdale
Sandford, William Mathews, Gloucester	William Paul, Truro
Simonds, Francis, 33, Devonshire Street, Bloomsbury; Devizes; and Warwick Court	Philip P. Smith, Truro
Shaw, Richard, jun., Gray's Inn Place; Burnley; and Lincoln's Inn Fields	John Ilderton Burn, South Square
Stable, William Henry, Carlisle	Ashley Maples, Spalding
Smith, James, 37, Wharton Street, Lloyd Square	William Edwards, Spalding
	Joseph Sandford, Winchcomb
	Gregory Jas. Sarmon Tomkins, Cheltenham
	Alexander Meek, Devizes
	Richard Shaw, sen., and Robert Artindale, Burnley
	Abraham Bass, Burton-upon-Trent
	Thomas Grueber, Billiter Street

Sanderson, John, 59, Albert Street, Mornington Crescent; Everton; Rock Ferry; Everett Street; and Camden Terrace	John Sanders, Liverpool
Sherwood, Frederick, 31, Woburn Square	John Shaw Leigh, Liverpool
Somerville, Stafford Baxter, Doncaster	George Vincent, King's Bench Walk
Seaman, Frederick William, Walsall	Edward Baxter, Doncaster
	Thomas Baker Cox, Poultry
	Nathaniel Cobham, Ware
Snell, William Henry, 5, Harpur Street, Red Lion Square; Heavitree; and Gloucester Street	John Stogdon, Exeter
Steedman, Charles, 17, Spencer Street; and Llangollen	Charles Richards, Llangollen
Selwyn, Frederick Michael, Hemingford Abbotts	Joseph Woodcock, Lincoln's Inn Fields
Saxby, Richard, 19, Spencer Street, Canonbury Square	Robert Leeson, Nottingham
*Stockley, Richard, 8, Artichoke Place, Mile-end; and Coborn Street	William Fowler, Huntingdon
	Stephen Walters, Basinghall Street
	Jos. Smith, Coleman Street
	John Benjn. Smedley, New Inn
	Edwin Smith, Bridge Street
	Charles Elmes Parker, Princes Street
Stretton, George, Nottingham; and Everett Street	George Freeth, Nottingham
Stone, Joseph, Matlock; and Belper	George Rawson, Nottingham.
Smith, George Archer, 12, East Place, Lambeth; East Retford; Store Street; and Devonshire Street	J. A. Swettenham, Belper
Tribe, Henry, 32, Melton Street, Euston Square	William Newton, East Retford
	William Tribe, Worthing
	Thomas Loftus, New Inn
Templer, William Force, 59, Lincoln's Inn Fields; Launceston; and Greenwich	C. Gurney, and J. L. Cowlard, Launceston
Underwood, Hugh Frederick, 8, Essex Street, Strand; and Hereford	Richard Underwood, Hereford
Westhorp, Sterling, 5, New Milman Street; Ipswich; Hampstead Street; and Bayswater	Charles Steward, Ipswich
Willmott, Frederick, 83, High Street, Southwark	Richard Carpenter Smith, Bridge Street
Wright, Thomas, 26, Alfred Street; and Newcastle-upon-Lyne	Josiah Wilkinson, Nicholas Lane
Welford, Edward Davison, 31, Wakefield St.; and Hexham	Armorer Donkin, Newcastle-upon-Tyne
Wallace, John, 32, Quay Street, Manchester	Edward Welford, Hexham
Walker, Edward, 3, Ridgmount Place, Hampstead Road; and Bungay	John Law, Piccadilly
Waddington, John Jarvis, 21, Margaret St., Usk; and Margate	James Taylor Margitson, Ditchingham
Wilding, William, jun., 26, Charterhouse Square; and Shrewsbury	Alexander Waddington, Usk
Wilnot, William Bendry, 5, Cloudesley Sqr.; Felix Place; and Chippenham	Josiah John Peele, Shrewsbury
Whatley, George, 6, Spencer Street, Clerkenwell; and Lowther Cottages, Liverpool Road	William Wilnot, Chippenham
Williams, George, 31, Alfred Place, Bedford Square	G. L. Whatley, Micheldean
Ward, Alfred, Barnes	George Becke, Lincoln's Inn Fields.
	William Williams, Alfred Place
	William Williams, Alfred Place

* This applicant has also given notice of admission in Chancery in Hilary Term.

REGISTRATION OF ATTORNEYS.

LAST DAY FOR LEAVING DECLARATIONS.

WEDNESDAY the 16th instant being the last day for obtaining the annual *stamped* certificate, in order that it may relate back to the 15th November, we have to remind our readers, that the declaration under the statute 6 & 7 Vict. c. 73, to entitle them to the *Registrar's* Certificate, must be left six days previously, namely, on *Thursday* the 10th instant.

ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

Bankruptcy.

ACT OF BANKRUPTCY.

Compulsory act.—Insufficiency of excuse for non-appearance of a trader debtor, summoned under the 5 & 6 Vict. c. 122. *In re Peter Filston*, 32 L. O. 423.

ACTION BY BANKRUPT.

Subsequent property.—Under stat. 6 Geo. 4, c. 16, ss. 63, 127, and 1 & 2 Will. 4, c. 56, s. 25, a person who has been twice bankrupt and obtained his certificates, but has not paid 15s. in the pound, may maintain an action in respect of property acquired since his last certificate, unless his assignees interfere. So held in the Exchequer Chamber, reversing the judgment in the Queen's Bench. *Herbert v. Sayer*, 1 D. & M. 523.

Cases cited in the judgment: *Humphreys v. O'Connell*, 7 M. & W. 370; *Mitchell v. Cragg*, 10 M. & W. 367; *Laue v. Farrer*, 8 M. & W.

ADJUDICATION

1. *Disputed.*—*Adjournment*, 5 & 6 Vict., c. 122, s. 23.—*Semble*, that a commissioner has no power to adjourn the hearing on a disputed adjudication beyond the five days allowed by the statute. *In re Thomas Knight*, 32 L. O. 109.

2. *Notice to dispute.*—In the absence of a party, against whom a fiat in bankruptcy issues, his attorney or solicitor may give notice of his intention to dispute the adjudication. *In re Maclean*, 32 L. O. 303.

AFFIDAVIT.

Insufficiency of affidavit of debt under stat. 1 & 2 Vict. c. 110, s. 8. *In re John Higgs*, 32 L. O. 230.

ANNULLING FIAT.

The court granted an order for annulling a fiat, where the second fiat had been issued, and the motion appeared to be made by the petitioning creditor under the subsequent fiat, with the concurrence of the petitioning creditor, subject to the application of the bankrupt, in whose absence the motion appeared to be made. *Re Leonard*, 33 L. O. 47.

ASSIGNEE.

1. *Purchasing effects.*—An assignee will not be allowed to bid at the sale of a bankrupt's effects, although the other assignees consent, and the articles to be sold have a peculiar value, known only to the assignee, and but few others in the bankrupt's trade.

Semble, that such assignee, being desirous of bidding, can only do so after his retiring from the assigneeship. *Re Rothschild*, 32 L. O. 630.

2. *Bidding at sale of bankrupt's effects.*—Where an assignee, without leave, bids at the sale by auction of the bankrupt's property, although for the purpose of raising the biddings merely, the court will direct a resale, ordering such assignee to make good the difference, if any, between the results of the two sales. *Ex parte Gover in re Humphreys*, 33 L. O. 21.

BANKRUPT'S LIABILITY.

Reviving debt.—The following note, held to be sufficiently signed, and to contain a sufficient promise under stat. 6 G. 4, c. 16, s. 131, so as to revive a claim barred by the bankrupt's certificate:—"Mr. Stanley begs to inform Messrs. Lobb & Co. that he will take an

early opportunity of settling their account, but Mr. Stanley objects to give his bill." *Lobb v. Stanley*, 1 D. & M. 635.

Case cited in the judgment: *Hubert v. Moreau*, 2 C. & P. 528.

COMMISSIONER'S SALARY.

The salary of the second commissioner of bankrupt is not charged on the suitors' fee-fund in aid of the bankruptcy and compensation fund, but on the latter alone; and the court has no power, on a deficiency, to marshal the funds so as to provide for the payment of the salaries of both the commissioners. *In re the 2nd Commissioner of Bankrupt*, 8 Ir. Eq. Rep. 257.

FIAT.

By bankrupt.—A debtor assigned his property for the benefit of his creditors. Subsequently, and when there was not any creditor, of sufficient amount, who could issue a fiat, the debtor, under s. 41 of the 7 & 8 Vic. c. 96, sued out a fiat against himself.

Held, that the assignment was valid, notwithstanding the fiat.

Whether it would have been so, had there existed any creditor competent to issue the fiat, *quære?* *Ex parte Philpott, in re Miskin* 32 L. O. 567.

INSOLVENT PETITIONER.

1. 7 & 8 Vict. c. 96.—An insolvent who has recently been discharged by the Court for Relief of Insolvent Debtors, may be discharged from debts subsequently incurred, by this court.

A final order may be made in a case where it appears that judgment, as in case of a non-suit, has been entered up against a petitioner, in an action of trespass. *In re James P. Davis*, 32 L. O. 62.

2. *Petition under Arrangement Act.*—*Semble*, That the neglect to serve a creditor with notice of the meetings held under the 7 & 8 Vict. c. 70, ss. 4 & 5, renders the proceedings taken at those meetings null and void.

When a debtor's petition under the 7 & 8 Vict. c. 70, is dismissed for irregularity, and he presents a second petition, the commissioner to whom the first petition was balloted, acts in the matter of the second petition without a fresh ballot. *In re John Thomas Angell*, 32 L. O. 136.

3. An Insolvent petitioning under 7 & 8 Vict. c. 96, should insert in his petition all the names by which he has been known, or the petition will be dismissed.

Semble, That an insolvent whose petition is dismissed, is a suitor of the court, and as such privileged from arrest on civil process, returning to his home. *In re Macdonald*, 32 L. O. 159.

4. Insufficient attestation of insolvent's petition, under stat. 7 & 8 Vict. c. 96. *In re Henry Muller*, 32 L. O. 230.

5. *Residence.*—To satisfy the requirements of the statute 7 & 8 Vict. c. 96, there must be a continuous residence within the district of

the court, for twelve months next preceding the date of the petition. *In re Lutton*, 32 L. O. 326.

6. *Attesting petition*.—The following attestation of the insolvent's petition insufficient:—"Signed by the said petitioner on the 29th day of July, 1846, in the presence of Henry B. Roberts of ———, attorney or agent in the matter of the said petitioner." *In re West*, 32 L. O. 399.

JURISDICTION.

Small Debts Act.—Where a creditor's name is not inserted in the insolvent's schedule, the debt is not barred by the final order. *Hambridge v. Kettle*, 32 L. O. 544.

NOTICE OF ACT OF BANKRUPTCY.

Avoiding execution, 2 & 3 Vict. c. 29.—*Quære*, whether a general notice that a party has committed an act of bankruptcy is a notice of an act of bankruptcy within the meaning of the stat. 2 & 3 Vict. c. 29.

A notice to the following effect:—"J. S. has committed an act of bankruptcy. He signed a declaration of insolvency yesterday. J. S. will be declared bankrupt immediately. I have sent for a fiat," is not such a notice as will deprive an execution-creditor of the protection of the 2 & 3 Vict. c. 29; the 6th section of the 6 G. 4, c. 16, requiring the declaration of insolvency to be filed, and to be advertised in the *London Gazette*, before it is a complete act of bankruptcy. *Conway v. Nall*, 1 C. B. 643.

OFFICE FEES.

When returned to the bankrupt.—Where no assignees have been chosen, and the fiat has been annulled, the court, upon the petition of the bankrupt, will order the office fees to be returned to him. *Ex parte Reynolds in re Reynolds*, 32 L. O. 519.

OFFICIAL ASSIGNEE.

Payments by.—In an action of debt on a money bond, where breaches have been assigned in the replication, and defendant has then suffered judgment by default, such assignment of breaches is regular, and a writ of inquiry may be executed thereupon, the ordinary course of striking out the pleadings subsequent to the declaration, and suggesting breaches being only a practice adopted for the sake of convenience. The Lord Chancellor made an order under 1 & 2 W. 4, c. 66, directing each official assignee of the Court of Bankruptcy to pay into the Bank of England all such sums of money as should come to his hands as soon as they should amount to 100*l.*, and to state, among other particulars, "the name and description of the bankrupt or bankrupts to whom the money belonged." *Held*, that, under this order, an official assignee is bound to pay into the bank as soon as the moneys in his hands from several estates amount in the whole to 100*l.* *Laves v. Shaw*, 1 D. & M. 714.

Cases cited in the judgment: *Petrie v. Fitzroy*, 5 T. R. 152; *Walker v. Priestly*, 1 Com. Rep. 376.

2. *Abatement of suit*.—The creditors' assignee and the official assignee have by the 1 & 2 W. 4, c. 56, s. 25, a joint title to the bankrupt's estate, so that if one of them died pending a suit in which they are co-plaintiffs, the suit may be continued by the other.

The 67th section of the 6 G. 4, c. 16, which provides, that a suit shall not abate by the death or removal of an assignee, but that it shall be prosecuted in the name of the assignee "chosen" in his place, applies, since the incorporation of that act with the 1 & 2 W. 4, c. 56, to official assignees as well as creditors' assignees. *Man v. Rickells*, 1 Phill. 617.

PETITIONING CREDITOR.

1. *Substitution*.—The expression "opening the fiat," in the 5 & 6 Vict. c. 122, s. 4, does not mean the mere reading of the document in court, but the adjudication of the commissioners after receiving the necessary proof; therefore, under the statute a new creditor may prosecute the fiat after the petitioning creditor has failed in proof of the debt.

Such new creditor is not bound to prove the petitioning creditor's debt, but the court may adjudge the party bankrupt on proof of the new creditor of his debt, the trading and act of bankruptcy, although the petitioning creditor's debt is insufficient, and no order is made by the Lord Chancellor for substituting another debt under the 6 G. 4, c. 16, s. 18. *Kynaston v. Davis*, 32 L. O. 629.

2. *Forfeiture of debt*.—*Filing fiat under stat.* 2 & 3 W. 4, c. 114, ss. 5, 8.—Defendant being a creditor of C., struck a docket against him, and issued a fiat, but did not file it, (under stat. 2 & 3 W. 4, c. 114, s. 5,) nor otherwise proceed in the bankruptcy. Afterwards he was requested by C. to sign a composition deed, together with C.'s other creditors, accepting 10*s.* in the pound. He refused to do this, except on receiving security for his whole debt; which C. gave him by promissory notes; and defendant thereupon signed the deed. C. afterwards committed an act of bankruptcy, and a fiat was prosecuted, under which plaintiffs were assignees. Before this act of bankruptcy defendant received money on one of the notes which had fallen due. Plaintiffs brought money had and received for the amount.

Held, that they could not recover; for that, although the case was within stat. 6 G. 4, c. 16, s. 8, and defendant's debt was forfeited, the money was to be paid only to persons appointed by commissioners under some commission founded on the defendant's docket, or under some later commission, and no appointment for this purpose had been made; and that, as C. himself could not recover the money, being party to the transaction, the plaintiffs, who succeeded only to C.'s rights, could not. *Belcher v. Sambourne*, 6 Q. B. 414.

Cases cited in the judgment: *Rose v. Main*, 1 N. Ca. 537, S. C. 1 Scott, 127; *Davis v. Holdring*, 11 A. & E. 710.

PROOF.

Bankers having taken a joint and several

bond and warrant to confess judgment from a firm of four traders, and two sureties, to secure the balance that might at any time be due from the firm to the bank, not exceeding a certain amount, entered six several judgments under the warrant : *Held*, that the bank might prove for a balance due to them within the amount covered by the bond and warrant against the joint estate of the bankrupts. *In re Clarks*, see 7 Ir. Eq. Rep. 39, recovered on appeal. *In re Clarks*, 8 Ir. Eq. Rep. 60.

Case cited in the judgment : *Bulstrode v. Gilburne*, 2 Stra. 1026.

SERVICE OF SUMMONS.

Small Debts Act.—On the service of a summons under the 8 & 9 Vict. c. 127, the original summons signed by the commissioner must be produced. *McNally v. Moore*, 32 L. O. 519.

TRADING.

Lodging-house keeper, providing board for lodgers, when a trader within the meaning of the 6 G. 4, c. 16, s. 2. *In re Benjamin Kent*, 32 L. O. 255.

Poor Law.

LUNATIC PAUPER.

Removal to a licensed house under stat. 9 G. 4, c. 40, s. 38.—Stat. 9 G. 4, c. 40, s. 38, empowered justices, by order, to remove lunatic paupers to the county lunatic asylum established under that or any other act ; “and if no such county lunatic asylum shall have been so established,” then to some public hospital or house licensed for the reception of insane persons.

Held, that justices, under this clause, could not remove to a licensed house, in a county for which a county asylum was established, but which asylum was too full to receive the pauper. Though it was assumed that the case, if not within s. 38, was unprovided for by the act. *Reg. v. Ellis*, 6 Q. B. 501.

ORDER OF JUSTICES.

Reference to margin.—*What words show an adjudication*.—An order of sessions, conferring an order of removal, had in the margin the words : “*Westmoreland*, (to wit,)” and proceeded :—“To the overseers of the poor of the township of K., and to the overseers of the poor of the township of C. in the said county. Whereas you, the overseers of K., have made complaint unto us whose names are hereunto set and seals affixed, being two of her Majesty’s justices of the peace and quorum in and for the said county,” &c. The rest of the order was in the usual form, and did not further state the county in and for which the justices acted. *Held*, that the jurisdiction sufficiently appeared by reference to the margin, which was part of the order for this purpose.

An order of sessions, on appeal against the above order, after setting forth the caption of the quarter sessions, proceeded :—“At which

general quarter session,” &c., “an appeal against a certain order,” &c., “is depending for trial, which said order is as follows,” (setting it out) : “And whereas the overseers,” &c., of C. did prosecute and carry on the said appeal to trial against the said order to the present general quarter sessions of the peace, and wherein this court, upon hearing of counsel on both sides, ordered that the said order be confirmed.” *Held*, on certiorari and motion to quash, that the order of sessions sufficiently showed an adjudication confirming the order for removal. *Reg. v. Casterton, Inhabitants of*, 6 Q. B. 507.

Case cited in the judgment : *Rex v. Chilverscotton*, 8 T. R. 178 ; *Rex v. Moor Critchell*, 2 East, 66 ; *Rex v. Holback*, 2 Bott. 692, pl. 864, (6 ed.) S. C. ; *Burr. S. C.* 198.

PETTY SESSIONS.

1. 2 & 3 Vict. c. 85 ; 4 & 5 W. 4, c. 76, s. 73.

—*Application to be heard at quarter sessions, when too late*.—*Misdescription of officers*.—Under stat. 2 & 3 Vict. c. 85, if application was made for an order of maintenance, and the party charged allowed the case to be partly heard at petty sessions by witnesses being examined, he could not take away the jurisdiction of the petty sessions by declaring, under sect. 3, that he was desirous that the charge should be heard at the quarter sessions. The election must have been made before the hearing commenced.

An order of maintenance directed the party charged to pay a sum for expenses incurred since the birth, which was stated in the order to have taken place more than six months before the order. *Held*, bad, under stat. 4 & 5 W. 4, c. 76, s. 73, although it was deposed that the expenses were calculated only for the time during which the child had been chargeable, which was less than six months. But, *held*, that the order was nevertheless good as to the residue, which directed payment in respect of future expenses. The order directed payment to be made to the churchwardens and overseers of a township to which the child was chargeable. The township had overseers, but no churchwardens ; the parish in which the township lay had churchwardens.

Held, no objection to the order. Per *Patteson and Williams, J.’s*, *dubitante Lord Denman, C. J.* *Reg. v. Oxley*, 6 Q. B. 256.

2. 2 & 3 Vict. c. 85, s. 1.—*Objection to jurisdiction, how raised*.—On application at petty sessions by guardians of a union, for an order of maintenance under stat. 2 & 3 Vict. c. 85, s. 1, the party charged attending, but not being ready to proceed, the case was postponed by consent, the defendant agreeing to admit that notice of application had been served. The admission was made ; and the guardians proved by a witness that the notice was signed by the proper parties. At the adjournment of the petty sessions, the defendant being still unprepared, demanded (under sec. 3,) that the case should be heard at the quarter sessions, and offered recognizances. The justices refused to

take them, alleging that the case had already been entered upon at the last petty sessions. The hearing proceeded; and the defendant by his attorney, cross-examined the witnesses, and addressed the justices in his defence. An order of maintenance was granted. On motion for a certiorari,

Held, assuming the justices to have been wrong in refusing to take the recognizances, that the party charged had waived the objection by making his defence. Writ refused. *Reg. v. Clarke*, 6 Q. B. 349.

REMOVAL.

1. Where the complaint on which a pauper is removed is made by an assistant overseer, *quare*, whether an appeal against the order of removal, the sessions should receive evidence to show that the complaint was properly authorized. An examination stated, "the pauper came to live with my father as farm servant, he was not engaged for any particular time; but my father found him board, washing, lodging and clothes, for so long a time as he stayed. The pauper continued in my father's service in that manner, without leaving, for more than two years, during all which time he lived and slept on my father's farm. There never was any other agreement come to, whilst I lived at home, but my father found the pauper with board, washing, clothing and lodging, during the said service." *Held* bad, as it did not show any hiring whatever. *Reg. v. Cutler, Inhab. of*, 1 D. and M. 702.

2. Under stat. 4 & 5 W. 4, c. 76, s. 79, where notice of chargeability is given on behalf of churchwardens and overseers, the act must be authorized by the majority.

Quere, whether this must appear on the face of the notice. *Reg. v. Westbury, Inhabitants of*, 1 D. & M. 605.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Chuck v. Cremer. Dec. 1st, 1846.

ATTACHMENT.—ERROR IN MASTER'S OFFICE.

An attachment will not issue against a party acting under an order of the Master, and which by mistake extended beyond the time mentioned by the party.

THIS was an appeal from the Vice-Chancellor of England, who had refused to set aside an attachment issued under the following circumstances:—The time for the defendant to answer expired on the 1st of June last, on which day a warrant (returnable on the 4th) was taken out for further time. By agreement between the parties, one lunar month from the 1st June was to be allowed, and a statement to that effect endorsed upon the warrant. The order of the Master was dated on the 4th, and

without referring to any day, for the commencement, granted a month's further time. On the 26th June the plaintiff gave notice, that an attachment would issue unless the answer was put in by the defendant on or before the 29th. The time allowed by the Master's order did not expire until the 2nd of July, and the defendant would not appear to a warrant to attend the Master on the 3rd of July, for the purpose of rectifying the mistake in the order. The attachment issued on the 30th of June. The defendant's solicitors swore that the error had been committed without their knowledge or connivance, and that a copy of the order had been transmitted through the post, on the 11th of June, to the plaintiff's solicitors.

Mr. James Parker and Mr. Daniel, for the defendant, submitted that the plaintiff was not justified in proceeding before the expiration of the time allowed by the order, and that he should have moved the court to set aside the same on the grounds of irregularity. *Wilkins v. Stevens*, (reversed by the present Lord Chancellor,) 10 Sim. 623.

Mr. Rolt and Mr. Kinglake, for the plaintiff, contended that the order was a surprise and a fraud upon him, and that the Vice-Chancellor's judgment had proceeded upon the grounds that the defendant had committed a breach of faith. It was argued, that as the order did not mention when the month was to commence, it must be reckoned from the time when the answer was due. It was admitted that the order had been received through the post, but it was contended that such was not strict service. This point, however, was not insisted upon, and was not alluded to in the judgment.

The Lord Chancellor thought that there was no foundation for assuming that the time was to run from any other day than the date of the order. It was clear that the plaintiff's conduct was improper. Solicitors seemed to put their own construction on the Orders of the Masters, and to be unmindful that they were now Orders of the Court, and as such must be obeyed until set aside. No decision as to the costs in the present stage; but attachment set aside.

Rolls Court.

In re Wallace. Nov. 19th, 1846.

TAXATION.—AGREEMENT TO PAY COSTS.

A person liable to pay a solicitor's bill under a general agreement to pay all the costs of a certain transaction, may have the bill taxed under a common order. Principle on which taxation must be conducted where the solicitor was not employed by the person applying to tax the bill.

THIS was a motion to discharge an order for taxation on the ground of irregularity. The bill of costs which was sought to be taxed related to the preparation of a lease. The solicitor employed was the solicitor of the lessor; and the parties who had obtained the order for taxation were the lessees, who, it appeared by the terms of the agreement under which they took the lease, were to pay all the expenses of

its preparation. The order obtained was the common order for taxing a bill within the month.

Mr. Collins, for the motion, contended that as the liability of the lessees to pay the bill arose only under an agreement with the lessor, they could not proceed to tax the bill under the common order. He contended also, that the order had not in fact been obtained within a month after the delivery of the bill.

Mr. Elderton in support of the order.

Lord Langdale held that the order was not irregular upon the first of the grounds of objection taken. The cases where there had been some special agreement as to the payment of costs had no application here, where there was a general liability to pay the bill. The only difference between such a case and that in which the party applying to tax had himself employed the solicitor was, that the solicitor was entitled to whatever the person employing him would have been liable to pay; that no objection could be taken by the person asking for the taxation which the original party could not have taken. Upon the second ground his lordship subsequently discharged the order.

Vice-Chancellor of England.

Russell v. Nicholls. Nov. 20th, 1846.

MARRIAGE OF INFANT WARD. — SETTLEMENT.

The court will not, even with the consent of a married ward, order payment of a fund belonging to her to the husband, but will order the usual reference to the Master to approve a settlement, leaving the husband to make such proposals before the Master as he may think fit.

In this case a petition had been presented by the mother of an infant ward who had married, praying for the usual reference to the Master for approving a settlement of certain monies belonging to the infant, and that the petitioner should be at liberty to lay proposals before the Master in relation to the terms of such settlement; and the court had made the order accordingly. On settling the minutes a question had arisen whether the order should not provide for the husband's making proposals also, and the cause having been set down to be heard upon minutes,

Mr. Hallet, for the husband, contended that as the fund in question belonged to the wife, and she desired that it might be paid to the husband, there was no reason why the court should not so order; or at all events there should be a reservation giving him the liberty of laying proposals for the settlement before the Master. He cited *Milner v. Coleman*, 2 P. Wms. 639; *Long v. Long*, 2 Sim. & Stu. 119; *Leeds v. Barnardiston*, 4 Sim. 538; *Simson v. Jones*, 2 Russ. & Myl. 365; *Seton on Decrees*, p. 287.

Mr. Stuart and Mr. Bates, in support of the order, said that the husband, who had given a mortgage upon his wife's interest shortly after

the marriage, had not entitled himself to any favour.

Mr. Toller for the mortgagee.

The Vice-Chancellor said there was no ground for departing from the usual course, which was to order a reference in the terms settled by the registrar in the minutes. The husband had not shown himself entitled to much consideration when he had mortgaged the property for his own benefit; but he would have the opportunity, according to the present form of the order, to go in before the Master and submit any proposals he might think necessary.

Vice-Chancellor Wigram.

Steedman v. Poole. Nov. 25, 1846.

COSTS. — DISMISSAL OF BILL. — REPLICATION. — NOTICE OF MOTION.

Where defendants gave notice of motion to dismiss the bill, but such notice was given for a day not being a seal-day, and previously to the seal-day, replication was filed: Held, that the defendant was not entitled to the costs of the motion, the notice being irregular.

Two of the defendants, being in a position to move to dismiss the bill, by reason of the replication not having been filed, gave notice of motion for dismissal, for Saturday, the 21st of November, or as soon after as counsel could be heard. The 21st November was not a seal-day, the motion could not be made until the next seal-day, the 25th November, but in the interval, viz., on the 23rd of November, the plaintiff filed his replication.

Mr. Albutt now applied, on behalf of the defendants, for the costs of the motion to dismiss, in consequence of the replication having been filed subsequently to the notice of motion.

Mr. Southgate opposed the application, upon the ground that the plaintiff was irregular in giving notice of a motion as for a day, not being a regular seal-day.

His Honour said, he considered the notice of motion quite irregular, and that, therefore, the defendants were not entitled to their costs.

Motion refused.

Queen's Bench.

(Before the Four Judges.)

Newton v. Chambers; Newton v. Same; Newton v. Same.

PRACTICE. — PROVISIONAL DIRECTORS. — STAY OF PROCEEDINGS.

Where a plaintiff for the same cause of action sues three provisional directors of a railway company at the same time in separate actions, and the attorney who appeared for all the defendants makes an affidavit that the causes of action, if any, are joint, and not separate, the court set aside a judge's order directing that all proceedings in the two last actions should be stayed till further ordered.

THREE actions were commenced against the provisional directors of a railway company, and a summons having been taken out before *Pollock*, C. B., he made an order that all proceedings be stayed in the two last mentioned actions till further ordered.

A rule *nisi* having been obtained to set aside this order,

Mr. *Chambers* and Mr. *Bramwell* showed cause.—A case identical with the present came before the Court of Common Pleas this term, in which that court set aside an order to stay proceedings under very similar circumstances, but that decision will not prevent this court exercising its equitable jurisdiction, if it should be satisfied that the proceedings are vexatious. It was stated in an affidavit made by the attorney who appeared for all the defendants, that the causes of action, if any, are joint, and not separate, and that they are for the same cause of action. In *Carne v. Legh*,^a where several actions were brought for the same debt against parties jointly, the defendant in one action having paid the debt and costs in that action, the court stayed the proceedings in the other actions, without costs.

In *Ererett v. Yowells*,^b and *Miles v. The Inhabitants of Bristol*,^c the court summarily interfered to stay proceedings. In actions on policies of insurance it frequently becomes necessary to bring several actions, because several underwriters are liable for different sums; but here that is not the case, because each defendant is liable for the whole amount. It is a vexatious proceeding to bring three actions when one would be sufficient. When a person residing out of the country commences an action here the court will, in the exercise of its jurisdiction, interfere to stay proceedings till security for costs is given. The defendant in either of these actions labours under this difficulty, that he cannot avail himself of a plea in abatement under the 3 & 4 W. 4, c. 42, s. 8, because he may be unable to state on oath that the co-defendants are resident within the jurisdiction of the court, as required by that statute.

Mr. *Keane* in support of the rule was not heard.

Lord *Denman*, C. J. I quite assent to the decision which has been come to by the Court of Common Pleas. I do not understand what is meant by saying, that if the defendants are liable at all they are jointly liable, because a provisional director is only liable by reason of the part which he takes in the transaction. I think no sufficient reason has been shown for staying these proceedings, and that the order made by the Chief Baron must be set aside.

Coleridge, J. The right of the plaintiff to bring several actions is unquestionable. This court will undoubtedly interfere, if it can be shown that the proceedings are vexatious and offensive, but in this present instance I think there is a total failure to make out such a case.

The plaintiff may bring his action against those whom he may think responsible, and afterwards abandon it against some and continue it against others. The liability of provisional directors is to be made out from the conduct of the parties themselves and the part they have taken in the transaction, and the plaintiff loses that chance by joining others in the action.

Wightman, J. I am of the same opinion. It seems to me that the case in the Common Pleas is well founded.

Erle, J., concurred.

Rule absolute. The defendants to plead issuably and take short notice of trial.

Common Pleas.

Norton, appellant, v. *The Town Clerk of Salisbury*, respondent. Michaelmas Term, Nov. 16th, 1846.

REGISTRATION APPEAL.—NOTICE OF APPEAL.—POSTPONEMENT OF HEARING.

Where it appeared that ten clear days' notice of appeal had not been given to the respondent before the first day appointed by the court for the hearing of the appeals, the notice, however, having been served within the four first days of the term, the court refused either to hear the appeal, or to postpone the hearing under the discretionary power given by the 64th sec. of the 6 Vict. c. 18, sufficient time for giving the notice having elapsed since the decision of the revising barrister.

Kinglake, Serjeant, for the appellant in this case, the respondent not appearing when the appeal was called on for hearing in its proper turn, produced an affidavit of the service on the respondent of the proper notice of appeal, required by the 62nd section of the Registration Act, 6 Vict. c. 18, on the 2nd day of the present month, and submitted that the court should hear the appeal in the absence of the respondent, or postpone the hearing under the 64th section of the same act. The case had been prepared and duly signed by the revising barrister on the 25th of October. The 64th section provided that no appeal should be heard where the respondent did not appear, unless the appellant proved that "due notice of his intention to prosecute such appeal was given or sent to the said respondent ten days at least before the day appointed for the hearing of such appeal; provided always, that if it shall appear to the said court that there has not been reasonable time to give or send such notice in any case, it shall be lawful for the said court to postpone the hearing of the appeal in such case as to the said court shall seem meet." In the present case ten clear days had not intervened between the giving of the notice and the first day fixed by the court for the hearing of the appeals, namely, the 12th instant; but that was not the fault of the appellant, as he had complied with what was submitted to be

^a 6 B. & C. 124. ^b 3 B. & Ad. 394.
Ib. 945.

the requirements of the 62nd section, in giving the notice on the 2nd. That section provided that every appellant "shall within the first four days in the Michaelmas Term next after the decision" appealed against, give the notice in question to the respondent. The fault, therefore, was in the court having appointed too early a day for the hearing, and on that ground they ought to exercise the discretionary power given by the proviso at the end of the 64th section, and postpone the hearing so as to enable the appellant to give the notice in proper time. In the case of *Newton v. Nubberley*, Lutw. Reg. Ca. 335, the court acted under that discretionary power. There had been no laches whatever on the part of the appellant, although it was submitted, that since the decision of the revising barrister there had been ample time for giving the notice.

By the Court. We should have been glad to find some ground on which we could have allowed the case to stand over so as to admit of ten days' notice being given. But it concerned the court to take care that it conformed to the enactments of the legislature, and this was not a case in which they were at liberty to grant the present application. It was clear that a reasonable time had elapsed since the decision of the revising barrister for giving the ten days' notice; and although it was singular that the 62nd section did not mention any time for the length of notice, yet under the 64th section it was quite clear that it must be ten clear days before the first day of hearing. Now, under this latter section the appeal cannot be postponed, unless there has been a want of reasonable time to give or send such notice, and here there was no suggested mistake, nor any one fact to which the court could refer to justify their acting under that section,—nothing to show that there was not reasonable time to give the notice. The case referred to was very different from the present, for there the appellant had been misled by the conduct of the respondent. On the whole, as the condition on which the court had authority to proceed had not been performed, the appeal could neither be heard nor postponed.

Hearing refused.*

* The following case is merely a confirmation of the above decision.

Adey, appellant, and Hill, respondent. Michaelmas Term, Nov. 19th, 1846.

Cockburne for the appellant. The respondent in this case does not appear, and after the decision of the court on Monday last, in *Norton v. The Town Clerk of Salisbury* (*supra*), the appellant is placed in some difficulty. Ten clear days' notice of the appellant's intention to prosecute the appeal before the first day appointed for the hearing of the appeals could not be proved. It is submitted, however, that as the case referred to had taken the profession by surprise, and invalidated the practice always adopted of giving the notice within the four first days of the term, the court,

Exchequer.

Reynell v. Lewis, Wyld v. Hopkins. Michaelmas Term, Nov. 25, 1846.

LIABILITY OF PROVISIONAL COMMITTEEMEN.—CONTRACT.—AGENT.

The mere fact of a party having agreed to be a provisional committee-man, is no evidence of an authority to make contracts on his behalf.

The association of persons as provisional committee-men for the purpose of carrying out a scheme is not in law a partnership, nor is there any implied agency on the part of one or more of the provisional committee to bind the others by his or their contracts.

Where a party has authorised his name to be inserted as a provisional committee-man in a prospectus, in which certain persons are described as the acting committee, and the prospectus has been publicly circulated, it is a question for the jury as to the inference to be drawn from the paper, and must depend upon the terms of each particular prospectus.

THE above cases, which involved questions as to the liability of persons promoting or being provisional committee-men of railway com-

under the circumstances, will postpone the hearing until next term.

Wilde, C. J. The court had considered with very great anxiety what is the true construction to be placed on the 6 Vict. c. 18, s. 64. By that act the legislature had parted with one of the most important constitutional powers, and had delegated it to this court. But it had thought fit to guard this power with express enactments of a precise and particular nature. The decisions of the revising barristers were made conclusive under certain conditions, one of them being, that in order to entitle a party seeking to reverse such decisions to apply to this court, he must give ten days' notice, at least, before the day appointed for the hearing of appeals. The court ought to attend strictly to the provisions of the act, leaving it to the legislature, if those provisions were too stringent, to decide in what respect they should be relaxed. The duty of the court was simply to see whether the appellant had complied with the condition on which his right to be heard rested, and on the plainest view of the matter, we think he has not, not being in a situation to prove, in the absence of the respondent, that he has given ten clear days' notice before the first day appointed for the hearing. With respect to a postponement of the case to the next term, that could have no effect in remedying the matter, for it could not then be said that the first day appointed this term was not still the first day of the hearing, and the objection would, therefore, upon principle be the same. On the whole, the court were clearly of opinion that the appellant could not be heard, or the appeal postponed.

Hearing refused.

panies, were argued on the 20th, 21st, and 23rd of November, before *Pollock, C. B., Parke, Alderson, and Rolfe, B.'s*. The voluminous extent of the arguments precludes us from giving them.

Cur. adv. vult.

On the 25th the judgment of the court was delivered by

Pollock, C. B. We have considered the two cases which were argued before us, and we think it right to state fully the principles on which our judgment proceeds. The question in all cases in which the plaintiff seeks to fix the defendant with liability on a contract either express or implied, is whether such contract was made by the defendant by himself or his agent with the plaintiff or his agent, and that is a question of fact for the decision of the jury upon the evidence before them. The plaintiff, on whom the burden of proof lies in all these cases, must, in order to recover against the defendant, show that the defendant contracted expressly or impliedly;—expressly by making a contract with the plaintiff, impliedly by giving an order to him under such circumstances as show that it was not to be gratuitously executed. If the contract was not made by the defendant personally, the plaintiff must prove that it was made by an agent of the defendant properly authorised in that behalf. In these cases of actions against provisional committee-men of railways, it often happens that the contract is made by a third person, and the point to be decided is, whether that third person was the agent of the defendant for the purpose of making and made the contract as such. The agency may be constituted by an express limited authority to make such a contract, or a larger authority to make all contracts falling within the class or description to which it belongs, or a general authority to make any contracts. Or it may be proved by showing that such a relation existed between the parties as by law would create the authority; as, for instance, that of partners, by which relation, when complete, one becomes by law the agent of the other for all purposes necessary for carrying on their peculiar partnership, whether general or special, or usually belonging to it; or the relation of husband and wife, in which the law, under certain circumstances, considers the husband to make his wife an agent. In all these cases, if the agent in making the contract acts on that authority, the principal is bound by the contract, and the agent's contract is the principal's contract, but not otherwise. This agency may be created by the immediate act of the party; that is, by really giving the authority to the agent, or by representing to him that he is to have it, or by constituting that relation to which the law attaches agency. Or it may be created by the representation of the defendant to the plaintiff, that the party making the contract is the agent of the defendant, or that such relation exists as to constitute him such; and if the plaintiff really makes the contract on the faith of the defendant's representation, the defendant is bound,—he is estopped

from disputing the truth of it with respect to that contract; and the representation of an authority is *quoad hoc* precisely the same as a real authority given by the defendant to the supposed agent. This representation may be made directly to the plaintiff, or made publicly, so that it may be inferred to have reached him, and may be made by words or conduct. Upon none of these propositions is there, we apprehend, the slightest doubt, and the proper decision of all these questions depends upon the proper application of these principles to the facts of each case, and the jury are to apply the rule with due assistance from the judge. There are few, if any, of these cases in which it is contended that authority was directly given by the defendant to the party making the contract to make it for the defendant: rarely has that circumstance been proved by direct testimony: in one it was said that it was to be inferred from a conversation in which the defendant expressed his satisfaction that the expenses were moderate, that was evidence of the fact for the consideration of the jury entitled to more or less weight, according to the other circumstances of the case. But it is contended that the relation of co-provisional committee-men constituted an association or a *quasi* co-partnership, in which one was agent for the other for the purposes of all preliminary proceedings necessary to enable them to obtain an act, or that the fact of their being co-promoters of the scheme, coupled with the fact that no money was supplied for the expenses of it, was evidence to go to the jury that each authorised the other to contract for those purposes on his behalf, and that of the other promoters. It was insisted that where there was no other evidence than the mere fact of the defendant having already agreed to be a provisional committee-man, there was a sufficient case, or at least a case for the consideration of the jury to prove an authority given by the defendant to every other committee-man to give the order out of which the contract arose, by himself or by the solicitor or secretary, or an authority to such solicitor or secretary, to give it on behalf of the committee. We think that no such consequence follows as matter of law from the mere fact of the defendant agreeing to be a provisional committee-man. Such an agreement amounts to no more than a promise that he would act with other persons appointed, or to be appointed, for the purpose of carrying some particular scheme into effect. The term "committee" means an individual or a body to which others have committed or delegated a particular duty, or who have taken on themselves to perform it, in the expectation of their acts being confirmed by the body they profess to represent or act for. An agreement to be a committee-man is an agreement to become one of that body. The schemes may be various:—to establish an hospital, or place of emigration, to which persons are to subscribe merely for charitable motives, or partly from these motives, partly from others; or a proprietary school, or literary institution, or assembly

room, in which they are beneficially interested as shareholders; or to obtain an act for a bridge, drainage, railroad, or canal: but whatever the objects may be, it seems to us to make little or no difference in the position of the person agreeing to act as a committee-man, if the object of some, most, or all, is gain to themselves individually. The legal consequence is the same as if the object of the parties were the most charitable and benevolent, though the result may be practically very different in exciting an improper prejudice in the minds of a jury when the evidence is laid before them for their consideration. Such an intended association constitutes no agreement to share in profit or loss, which is characteristic of a partnership. It would be absurd to suppose that such a relation could be meant to be created by any of those who consented to act. Could it be imagined that a person would agree to be a partner, not only with those who were then named committee-men, but any that should afterwards be named by themselves or by the projector of the company; and could those who subsequently agreed to become members suppose that those previously named could ever have so intended? The truth is, the agreement to become a provisional committee-man means neither more nor less than the words express, viz., an agreement to act on the provisional committee in carrying into effect the preliminary arrangements for petitioning parliament for a bill, and so to promote the scheme. If afterwards the provisional committee-man does act, he is responsible for his acts. But there are other cases in which the question does not assume so simple a form, and where there is evidence that the defendant has not only consented to be a provisional committee-man, but has authorised his name to be inserted in a prospectus, not generally, but a particular prospectus, in which, in some cases, certain persons are described as the *acting* committee, in others solicitors are named, or engineers, or a secretary. If such a prospectus has been publicly circulated with the defendant's consent, so that the jury would presume the plaintiff knew of it, or if the plaintiff has had it shown to him at or before the time of the making of the contract, and has in either case acted upon it in making the contract, the question is, what inference ought a reasonable man to draw from the contents of that paper. This must, of course, depend upon the terms of each particular prospectus. If the prospectus state merely the names of the provisional committee, and nothing more, and no light can be derived from the context, that circumstance does not alter the liability of the defendant. If not responsible as being one of that committee in fact, he cannot become so by the representation of the fact. If it state the names of the *acting* committee, does it mean that the *acting* committee is to take the whole management to the exclusion of the provisional committee, their provisional character having ceased, in which case the provisional committee would not be liable? or does it mean that the pro-

visional committee-men have appointed the acting committee, or the majority of it, on their behalf, and *as their agents*, in which case they would be liable for the contracts of the acting committee, or the majority made as such agents? Again, does it mean where the solicitor's name is mentioned, that such person would be regularly employed in that character by those of the committee who acted, or that he was appointed by *all* whose names are mentioned as their solicitor to do all solicitors' business on their behalf? and then would arise a further question, what was the business at the time of the contract usually transacted by solicitors for companies intending to obtain an act of parliament on behalf of the company? which is a question of fact to be proved by evidence. The same remark applies to the appointment of secretary. Applying these observations to the two particular cases before us, we think that in that of *Reynell v. Lewis*, there was some evidence to go to the jury of the employment of the plaintiff, and that there was no misdirection, but we think that we ought to grant a new trial, on payment of costs, in order that it may be submitted to another jury, and fully considered by them upon the principles above laid down. In the other case of *Wyld v. Hopkins*, we entertain so much doubt whether there was any evidence at all to go to the jury, that we think there ought to be a new trial generally, without the condition of the payment of costs.

Rules absolute accordingly.

CHANCERY CAUSE LISTS.

Sittings after Michaelmas Term, 1846.

Lord Chancellor.

APPEALS.

{	Strickland	Strickland	}	appeal
	Ditto	Boynton		
	Ditto	Strickland		
To fix a day. }	Dalton	Hayter		appeal
{	Attorney-Gen.	Masters & Wardens, &c. of the City of Bristol.	}	appeal
S. O.	Black	Chaytor		do.
S. O.	Johnson	Reynolds fur. dirs. by ord.		
	Lord	Wightwick		appeal & mtm.
	Trail	Bull		appeal.
S. O.	Stocken	Dawson	4 causes, do.	
S. O.	Watts	Hyde		appeal
{	Walford	Adie	}	do.
	Adie	Walford		
	Morison	Morison		do.
	Davis	Chanter		do.
{	Macmahon	Burchell		do.
{	Ditto	Ditto		do.
	Attorney-Gen.	Mayor, &c., of Newcastle upon-Tyne		appeal
	Joynson	Moseley		do.
	Bainbridge	Baddeley		do.
	De Beauvoir	De Beauvoir		do.
	Finden	Stephens		do.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Heath v. Chadwick, dem.
 Thelluson v. Lord Rendlesham, dem.
 Tibbs v. Rushbrook, plea.
 Terry v. Wachter, pt. hd.
 Simpson v. Holt, fur. dirs. and costs.
 Garrod v. Moor.
 Smale v. Bickford, 2 causes.
 Peacock v. Kernot.
 Morrison v. Watkins.
 Wright v. Barnewell, exons. and fur. dirs.
 Greenway v. Buchanan.
 Walton v. Morritt.
 Dobson v. Lyle, fur. dirs. & costs.
 Parker v. Hawkes, exons.
 Giffard v. Withington.
 Daniel v. Hill.
 Insole v. Featherstonhaugh.
 Lane v. Durant, exons. and fur. dirs.
 Pocock v. Johnson.
 Cope v. Lewis.
 Attorney-Gen. v. Trevelyan.
 Stert v. Cooke.
 Hodgkinson v. Barrow, fur. dirs. and costs.
 Colbourn v. Coling.
 Hickson v. Smith, at deft.'s request.
 Palmer v. Pattison fur. dirs. and costs.
 Minter v. Wraith, fur. dirs. and cause.
 Hemming v. Spiers, exons.
 Chambers v. Waters, exons.
 Smith v. Robinson.
 Foster v. Vernon, fur. dirs. and costs.
 Vale v. Sherwood, 7 causes, ditto.
 Haffenden v. Wood, exons.
 Branscomb v. Branscomb, fur. dirs. and costs.
 { Stammers v. Hallby, 3 causes, fur. dirs.
 { Ditto v. Battye, by order.
 Dorville v. Wolff, fur. dirs. and costs.
 Richards v. Patterson, fur. dirs. and costs.
 Woodman v. Madgen, fur. dirs. and costs.
 Attorney-Gen. v. Pearson, exons. and fur. dirs.
 Dawson v. Chappell, fur. dirs. and costs.
 Wait v. Horton ditto
 Montague v. Cator, fur. dirs. and cause.
 Groom v. Stinton, 4 causes.
 Corbett v. Limbrick, fur. dirs. and costs.
 Baxter v. Abbott, fur. dirs. and costs.
 De Beauvoir v. De Beauvoir, fur. dirs. and costs.
 Beale v. Warder, rehearing.
 Turner v. Simcock, fur. dirs. and costs.
 Booth v. Lightfoot, fur. dirs. and costs.
 Ludlow v. Guilleband, fur. dirs. and costs.
 Howell v. Saer.
 Attorney-Gen. v. East India Company.
 Roberts v. Cardell, exons.
 Warwick v. Richardson, exons. and fur. dirs.
 Morgan v. Kingdon, fur. dirs. and costs.
 Lewis v. Hinton, fur. dirs. and costs.
 Wilson v. Williams.
 Robotham v. Amplett, exons.
 Ellison v. Clark.
 Bailiff, &c. of Bridgnorth v. Collins, fur. dirs.
 and costs.
 Gaches v. Warner, 2 causes.
 Birch v. Joy, fur. dirs. and costs.
 Day v. Slade.
 Lufkins v. Lufkins, fur. dirs. and costs.
 Nightingale v. Goulbourn, fur. dirs. & costs.
 Green v. Bailey.
 Atkins v. Harton, fur. dirs.
 Straker v. Wilson.
 White v. Briggs, exons. 3 sets, and fur. dirs.

Damer v. Portarlington, 2 causes.
 Greenham v. Greenham, fur. dirs. and costs.
 Burrow v. Hardey, fur. dirs. and costs.
 Short, Cholmondeley v. Cholmondeley, fur. dirs.
 and costs.
 Middleton v. Elliot, fur. dirs. & costs.
 Hyde v. Neate, exons. and fur. dirs.
 Milne v. Lee, fur. dirs. and costs.
 Bownass v. Abbott, exons.
 Langston v. Cozens, fur. dirs. and costs.
 Mapp v. Ellicock ditto.
 Webb v. Enticknap ditto.
 Hammer v. Hammer ditto and cause.
 Myers v. Macdonald, 2 causes.
 Wilson v. Wilson, exons., 2 sets.
 Garratt v. Lancefield, fur. dirs.
 Amey v. Walker, 2 causes.
 Ashurst v. Mill.
 Nicolas v. Nicolas.
 Kennett v. Tytherleigh
 Lovett v. Soames.
 Short, Jones v. Woods.
 Skinner v. Manser, 2 causes.
 Woodward v. Smyth.
 Attorney-General v. Stone.
 Skey v. Ody, fur. dirs. and costs.
 Wall v. Wall, fur. dirs. and costs.
 Simpson v. Earles, 2 causes.
 Wright v. Adams.
 Abram v. Ward.
 Elliott v. Lyne, 2 causes.
 Ewart v. Phillips, fur. dirs. and costs.
 Norton v. Hepworth.
 Belcher v. Lockey, 2 causes.
 Short, Higgins v. Skipp.
 Kensit v. Cressey, 3 causes.
 Wasterby v. Fisher, fur. dirs. and costs.
 Costobadie v. Costobadie, 2 causes
 Jackson v. Nottidge.
 Woodfall v. Bagster, fur. dirs. and costs.
 Odell v. Lockett.
 Wright v. Lilley.
 Gervis v. Gervis, fur. dirs. and costs.
 Fairfax v. Drought.
 Short, Murray v. Stone, fur. dirs. and costs.
 Grant v. Hutchinson ditto.
 Thompson v. Day ditto.
 Hall v. Hall.
 Calvert v. Richards.
 Short, Davids v. Powell.
 Field v. Bentley.
 Murray v. Cock, 2 causes
 Short, Hunt v. Griffith,
 Garbett v. Whitehead.
 Attorney-General v. Wilson,
 Short, Foster v. Handley.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Collins v. Giles, plea.
 Dec. 4 { Gibbs v. Waters.
 { Ditto v. White.
 Ballard v. Bateman, pt. hd.
 Dec. 12, Topsam v. Buxton.
 Dec. 3, Dunston v. Paterson, fur. dirs. and costs.
 Sanford v. Sanford ditto.
 Newenham v. Pemberton.
 Thomas v. Phillips.
 Pearce v. Pearce, exons. pt. hd.
 Dec. 7, Jefferson v. Miller.
 Dec. 9, Sheppard v. Harris.
 Fuller v. Woods, fur. dirs. and costs.

Dec. 10, Leicester v. Newman.
Edington v. Rackham, fur. dirs. and ptn.
Dec. 12, Cook v. Gustard
Follett v. Wesley, fur. dirs. and costs.
Taylor v. Simpson ditto.
Bishop v. Cappel ditto.
Dec. 17, Pilkington v. Wilson.
Dec. 17, Neale v. Woodhouse.
Dec. 19, Morris v. Bull.
Dec. 21, Edwards v. Champion, 2 causes.
Dec. 21, Moxhay v. Inderwick,
Short, Thick v. Thick, fur. dirs. and costs.
Dec. 24, Petty v. Atherley.
Dec. 24, Baddeley v. Carwen.
Dec. 26, Hammond v. Baker,
Dec. 26, Smith v. Wilkinson, 3 causes.
Dec. 26, Dowsing v. Churchyard.
Quarrill v. Binmore, fur. dirs. and costs.
Livesey v. Leicester, ditto.
Dec. 28, Habershon v. Blurton.
Treadwell v. Merry, fur. dirs. and costs.
Morgan v. Pritchard.
Dec. 28, Batterfield v. Rayner.

Vice-Chancellor T. Ingram.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Belsham v. Harrison, exons.
To fix a day, Lowes v. Lowes, fur. dirs. and costs.
Hil. Trm., Plowden v. Thorpe.
O. S., East India Company v. Coopers' Com-
pany.
Est. Trm., Maxwell v. Kibblethwaite, 2 causes.
Dec. 7, Starkey v. Blake.
After Hil. Term, Tolson v. Dykes, 3 causes,
Ogle v. Hansard, pt. hd.
Lewis v. Thomas.
Bell v. Alexander.
Bull v. Pritchard.
Dobson v. Land.
Winter v. Winter, fur. dirs. and costs.
Comtes v. Hammond, 2 causes.
Shuttleworth v. Bengough.
Champion v. Banks.
Worley v. Frampton, exons, and fur. dirs.
Dawes v. Betts.
Wood v. Rowcliffe.
Attorney-General v. Lucas, exons.
Stinton v. Taylor.
Beach v. Beach, fur. dirs. and costs.
Henson v. Blackwell ditto.
{ Moss v. Leigh } exons.
{ Ditto v. Whitley, }
Lake v. Stewart.
Blundell v. Mills.
Dean v. Hickenbotham.
Merry v. Barchard, fur. dirs. and costs.
Whitlow v. Dilworth, 2 causes.
Routledge v. Gibson.
Bachelor (pauper) v. Middleton.
{ Booker v. Clark } fur. dirs. and
{ Ditto v. Slagg } costs.
Payne v. Coles.
{ Letts v. The London and Blackwall Railway
Company.
{ The London and Blackwall Railway Company
v. Letts.
Chase v. Morris, fur. dirs. and costs.
Crockett v. Crockett, ditto and petition.
Stephenson v. Everatt, fur. dirs. and costs.
Tyler v. Lee ditto.
Pringle v. Smith.
Justice v. Langster.
Marsh v. Kingdom.

Raby v. Ridehalgh.
De Sola v. Mesnard.
Jones v. Coles.
Bennett v. Humberstone.
Tyler v. Morris, fur. dirs. and costs.
Brown v. Brown ditto.
Ingram v. Thorp.
Sharp v. Taylor, fur. dirs. and costs.
Wilson v. Johnson.
James v. Wynford.
Thompson v. Findlay, fur. dirs. and costs.
Stevens v. Pullin.
Say v. Creed, fur. dirs. and costs.
Butlin v. Masters ditto.
Attorney-Gen. v. Florance, suppl. bill.
Dowse v. Wilson.
Bennett v. Harry.
Watson v. Crawley.
Mellington v. Cook, fur. dirs. and costs.
De Menzies v. Desanges.
Vernon v. Nethersole.
Freame v. Bailey, fur. dirs. and costs.
Dawson v. Paver.
Lardin v. Binny, fur. dirs. and costs.
Gregson v. Booth ditto.
{ Salter v. Waller } ditto.
{ Matthews v. Clutton }
Robinson v. Purday.
Manser v. Jenner.
Tipping v. Clark.
Matthews v. Bowler.
Short, Howard v. Howard.
Hick v. Flower.
Spencer v. Church.
Malcolm v. Scott.

CHANCERY SITTINGS.

After Michaelmas Term, 1846.

Lord Chancellor.

AT LINCOLN'S INN.

Tuesday	Dec. 1	{ The 1st Seal—Appeal Mo-
		tions and Appeals.
Wednesday	. . . 2	{ Appeals.
Thursday	. . . 3	{ (Petition-day) Petitions,
		(unopposed only) and Ap-
Friday	. . . . 4	peals.
Saturday	. . . . 5	Appeals.
Monday	. . . . 7	{ The 2nd Seal—Appeal Mo-
		tions and Appeals.
Tuesday	. . . . 8	{ Appeals.
Wednesday	. . . . 9	{ Appeals.
Thursday	. . . . 10	{ Appeals.
Friday	. . . . 11	{ Petition-day (unopposed
		only) and Appeals.
Saturday	. . . . 12	Appeals.
Monday	. . . . 14	{ The 3rd Seal—Appeal Mo-
		tions and Appeals.
Tuesday	. . . . 15	{ Appeals.
Wednesday	. . . . 16	{ Appeals.
Thursday	. . . . 17	{ Appeals.
Friday	. . . . 18	{ Petition-day (unopposed
		only) and Appeals.
Saturday	. . . . 19	Appeals.
Monday	. . . . 21	{ The 4th Seal—Appeal Mo-
		tions and Appeals.
Tuesday	. . . . 22	General Petition-day.

Master of the Rolls.

AT THE ROLLS.

Tuesday . Dec. 1 Motions.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 12, 1846.

“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

CONSTRUCTION OF THE STAMP ACT.

AD VALOREM DUTY ON DEEDS, HOW CAL- CULATED.

THE last Number published of the Reports of Cases argued and determined in the Court of Exchequer, contains an important decision upon the construction of the Stamp Act,^a 55 Geo. 3, c, 184, establishing the principle, that the stamp should be determined by the amount of the sum agreed to be secured, and not by any collateral stipulations which may be contained in the deed, and expressly overruling a case of *Dickson v. Cass*,^b decided some years ago by the Court of Queen's Bench, and which is at variance with the principle now laid down.

In the case first adverted to, the defendant, Rotheram, executed a bond in the penalty of 2,000*l.*, conditioned for the payment to the Chesterfield and North Derbyshire Banking Company, of all such sums of money, not exceeding in the whole 1,000*l.*, which from time to time should be and remain due from him to the banking company on the balance of his account current, *together with such interest and commission* as should be due to the said company, and *customary and incidental charges* for stamps, &c. The banking company having brought an action on the bond, the defendant pleaded *non est factum*, and upon the production of the bond at the trial, it appeared that it bore a stamp

of 6*l.*, being the ad valorem duty on 1,000*l.* The question was, whether the stamp was sufficient, or whether the bond should not have been stamped with a 25*l.* stamp, by reason of the stipulation for payment of “interest and commission” and of “all customary and incidental charges.” The point was reserved at the trial, and afterwards became the subject of an application to the court in banco.

The words of the Stamp Act, upon which the point arose, are as follow:—“Bond, &c., given as a security for the repayment of any sum or sums of money to be hereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be:—Where the total amount of the money secured, or to be ultimately recoverable thereupon, shall be *uncertain* and *without any limit*, 25*l.*; and where the money secured, or to be ultimately recoverable thereupon, shall be limited to a certain sum, the same duty as on a bond for such limited sum.” It was contended that in the case under consideration, the money secured and ultimately recoverable by the bond, was not only the principal sum of 1,000*l.* but such further sum as may become due for interest or commission, or for incidental charges, the amount of which were necessarily uncertain and without any limit. It was admitted to be settled law, that the proper amount of stamp duty on a bond depends, not upon the penal sum named in the bond, but upon the nature of the condition, or in other words, upon the amount secured by and recoverable

^a 15 Mees. & W. part 1, p. 39. *Frith v. Rotheram*.

^b 1 B. & Adol. 343.

^c Sched. part 1, tit. “Bond,” clause 2.

upon the bond, which in this instance, it was argued, was unlimited. *Dickson v. Cass* was cited as expressly in point, for in that case, as in this, there was a bond in a penalty of 2,000*l.*, and after reciting that *A.* and *B.* had opened an account with the obligees, who were bankers, and that the latter had agreed to discount bills and pay in advance for *A.* and *B.*, any sum not exceeding 1,000*l.*, the condition was, that *A. B.* and *C.* should satisfy and pay the bankers all such sums as they should advance on account of the accepting or paying any bills, &c.; together with such lawful charges and allowances for advancing and paying such bills as were usually charged by bankers in such cases, and interest; and it was held, that this being a bond to secure not only a sum of 1,000*l.*, but a further sum for the bankers charges for commission, &c., required a 25*l.* stamp.

The court admitted that the case of *Dickson v. Cass* was an authority for the proposition now contended for on behalf of the defendant, but that case could not be sustained, and was already virtually, though not expressly, overruled; and *Parke, B.*, observed, that although he had concurred in the judgment in *Dickson v. Cass*, he speedily repented of having done so, and was now satisfied the judgment in that case was erroneous. The tax was regulated by the amount of the money secured by the bond, and not by the amount of the penalty. The bond in the present case was given to secure the sum lent, advanced, paid, or due on an account current which was limited to 1,000*l.*, and the bond bore a stamp more than sufficient for that amount. It was argued, that this bond became liable to the higher duty, because it not only secured money, lent, advanced, paid, or due on the balance of an account current, but also interest and commission. This court had already held,^d that interest is not money lent, advanced, or paid, within the meaning of this part of the Stamp Act, and consequently that where a bond is given to secure a sum of money with interest, the stamp is regulated solely by the amount of the principal sum. The question therefore remained, whether this right to charge commission made any difference? But commission did not fall under any of the heads under which the schedule imposes a fixed duty. It is not money lent, advanced, paid, or due on ac-

count current, it is a remuneration for work and labour, and there is no clause in the act imposing an additional stamp on a bond given to secure such remuneration. After a masterly review of all the decisions^e subsequent to that of *Dickson v. Cass*, the learned baron expressed his approval of the principle embodied in the judgment of the Court of Queen's Bench in *Doe dem. Merceron v. Bragg*,^f in which *Lord Denman*, delivering the judgment of the court, after taking time to consider, said:—"The objection here was, that the mortgage deed was stamped only to the extent of the sum advanced, and did not cover the amount of taxes and rates which might be charged on the premises, and which the mortgagor covenanted to pay, and until payment of which the proviso for redemption was not to operate. This amount is truly said to be uncertain, and without a limit; and hence the 25*l.* stamp is argued to be necessary, instead of the ad valorem stamp. The answer is, that to the amount of these taxes and rates the mortgagee is at all events entitled; that he required no stipulation in respect of them; and that the stamp is regulated by the amount advanced, or agreed to be advanced." The principle of construction adopted by the court was pitifully expressed by *Alderson, B.*, who said, "The total amount of money secured in the statute means the amount secured as money. Here the amount of money secured is expressly limited by the bond. The obligee may, no doubt, also recover interest and commission; but they are not mentioned in the statute; the amount which is to regulate the stamp excludes them, and unless they were clearly included, the subject ought not to be taxed in respect of them." And *Platt, B.*, whilst expressing his concurrence in the interpretation put upon the statute by the other members of the court, remarked, that the descriptive words of the act are, "Bond given for the repayment of money," which could not apply to commission or interest, but to the principal sum intended to be secured, and which alone is to be repaid.

Upon these considerations, the stamp was held to be sufficient, and the decision,

^e Viz., *Doe d. Scruton v. Snaith*, 8 Bing. 146; 1 M. & Sc. 230; *Doe d. Jarnan v. Lander*, 3 Bing. N. C., 92; 3 Sc. 407; and *Padon v. Bartlett*, 2 Ad. & E. G. 4; N. & M. 1.

^f 5 Ad. & El. 620; 3 N. & P. 644.

as well as the reasons for it, appear to be satisfactory and well calculated to put an end to the doubts which prevailed on this subject.

LAW OF COSTS.

APPLICATION TO TAX AN ATTORNEY'S BILL BY A PARTY OUTLAWED.

It appears from a case decided in the Court of Queen's Bench, and very recently reported,^a that the rule of law, that an outlaw cannot appear in court for any other purpose but to reverse his outlawry,^b although it has been modified in modern practice so as to admit of the outlaw being heard in matters purely defensive, where he is only protecting himself from claims made by others,^c is still in force when a party outlawed, for his own benefit, desires that an attorney's bill of costs should be taxed.

This point was decided upon a rule, obtained at the instance of the Hon. Robert Fulke Greville, calling upon Mr. James Mander, an attorney, to show cause why two bills of costs, delivered by him under a judge's order, should not be taxed. It appeared that Mr. Greville was administrator, with the will annexed, to his mother, the late Countess of Mansfield^d, who bequeathed to him her personal estate subject to the payment of debts, &c. One of the bills delivered was headed:—"Dr. the Countess of Mansfield and the Hon. R. F. Greville in account with J. Mander," and claimed a balance due to the latter of 3080*l*." The second bill was headed:—"The Countess of Mansfield in account with J. Mander," and stated a balance of 248*l*. The application was resisted on the ground that Mr. Greville had been outlawed in January, 1843; that the outlawry was not reversed; and that he was now living out of the jurisdiction. On the other hand it was suggested, that injustice would be done to the creditors of the deceased countess's estate, if the court did not order the joint account to be taxed; and that the disability of an outlaw to take legal proceedings attached only when he proceeded in his own right.^e

^a In the matter of *Mander*, Gent., one &c. 6 Q. B. 867.

Aldridge v. Euller, 2 Mee. & W. 412.

v. Thelluson, 1 Dowl. N. S. 227; and *Davis v. Trevanion*, 2 Dowl. & L. 743.

6 Bac. Abg. tit. Outlawry (D.). 3.

The court thought the case fell within the general rule, that a party outlawed can only apply to set aside the outlawry. If an action were brought against him, the case would be different. And *Patteson, J.*, in the course of the argument, observed upon the practical distinction created by the late act. "Under stat. 2 Geo. 2, c. 23, s. 27," said the learned judge, "taxation was ordered on the undertaking of the party chargeable to pay what should appear due: under stat. 6 & 7 Vict. c. 73, s. 37, there is no such undertaking, but the taxation takes effect by a judgment." And he adds, "how would that operate in the case of an outlaw?" The rule was discharged.

NOTES ON EQUITY.

SOLICITOR'S RAILWAY AGREEMENT.— TRUSTEE.—FUTURE COSTS.

VERY extraordinary contracts have been entered into by the promoters of Railway Companies for securing Provisional Committees from the preliminary expenses, and it is not without concern that we find some of these arrangements imprudently made by solicitors. In a case decided in January last, and just reported by Mr. Hare,^a it appears that the solicitor received but an ill return for the labour, expense and responsibility he incurred. He engaged to pay all expenses incidental to the project up to the time of the payment of the deposits upon shares, such deposits being held liable as a fund for repayment. The engagement was made on the implied faith of his being continued in his office of solicitor to the company. But he was removed, and the legal objections which we shall presently state, were, we think, ungraciously raised to his demand. In substance, the facts were as follow:—

The plaintiff was the projector and former solicitor of a joint-stock company, formed for making "The Southampton, Manchester, and Oxford Junction Railway." The project was brought forward with great labour and expense, and was laid before a public meeting, which approved of the undertaking, and at which the members of the provisional committee were appointed, and consented to act. It was suggested to the plaintiff, by the chairman, that it was usual for the projector, solicitor, and

¹ See *ante*, p. 76, as to the practice of enforcing payment by attachment

Parsons v. Spooner, 5 Hare, 102.

other officers of similar schemes, to take upon themselves the sole risk and responsibility of the undertaking, and to indemnify the provisional committees; and the draft of an agreement to that effect was handed to the plaintiff, who, relying on the good faith of the provisional committee, and that he would be continued solicitor to the undertaking, and be paid his costs and disbursements as soon as a sufficient amount of deposits should be obtained, acceded to the proposition; and the following memorandum was signed by the chairman on behalf of all present:—"Memorandum: The solicitor and other officers, as they may be appointed, hereby pledge themselves to pay all preliminary expenses, and hereby give a general indemnity to the provisional committee, collectively and individually, against all costs and charges of any sort that may be incurred in prosecuting or promoting this scheme, up to the payment of the deposits, to which fund alone they look for repayment of such expenses and disbursements, and for professional remuneration, the committee agreeing to repay such costs, expenses, and disbursements, and the reasonable and proper costs of the said officers out of the said deposits." On the other hand, the following printed circular or form of agreement was signed by the plaintiff, and sent to each member of the committee:—"Southampton, Manchester, and Oxford Junction Railway. I, the undersigned, being the solicitor to the above project, do hereby declare and agree, that I do not hold any patron or member of the provisional or managing committee thereof in any way liable or responsible to me for the repayment of any monies I may have expended, or shall expend, in the projecting, promoting, or prosecuting this object, or for the payment of any charges for professional or other services rendered by me in relation thereto, or in any way connected therewith; and I declare and agree, that I look to the deposits or joint-stock of the said company alone as the fund and means of repayment of such disbursements and payment of professional and other services. And I undertake to pay and discharge all expenses incidental to the said project, and the prosecuting thereof, and the formation of the company, up to the time of payment of deposits upon shares sufficient in amount to repay, satisfy, and discharge all payments, disbursements, and liabilities made or incurred in respect to the matters aforesaid, or any of them, up to that time, the said deposits or joint fund being held liable for such purpose by the directors or trustees of the company."

Notwithstanding this arrangement, the provisional directors discharged the plaintiff as their solicitor, and refused to pay a demand, which (compared with others) seems of very reasonable amount, viz. 897*l*. The plaintiff filed his bill to obtain payment out of the deposits on shares amounting to 50,000*l*. The defendants demurred

to this bill. We pass over one of the points as immaterial to our present purpose, and shall extract so much of the Vice-Chancellor's judgment as relates to the liability of the provisional committee in their character as *trustees*, and the legal objection to the arrangement as a security for future costs.

It was said that the agreement was altogether illegal, that the provisional committee were to be viewed as *trustees* for the company; and that, being so, they did an illegal act when they contracted, that they the provisional committee should not be personally liable to the solicitor, but that the solicitor should be paid out of the fund.

The Vice-Chancellor said, "The argument is, that a trustee has no right to make that species of contract; because it deprived, or tended to deprive, the *cestuis que trust* of the benefit of that security which they would have from the diligence of the trustee himself, if he were acting upon his own responsibility. I cannot accede to the correctness of that argument. *Prima facie*, the trustee has a right to be indemnified by his *cestuis que trust* before he incurs any liability."

On the other ground upon which the illegality had been argued, namely, that it was a contract by a solicitor with his client for a *security for costs*, and that a solicitor was not allowed to contract for a security for his costs, whether professional or out of pocket, before those expenses have been incurred,

His Honour said, "If, however, the client, being a trustee, were to agree with a solicitor that he should not make a demand upon him personally, but that, when the funds should come to hand, he should be paid out of those funds, such claim as he might have a right to make against them,—such a contract may be very different from the common one to which the rule applies. On this point, I do not, however, think it is necessary to say more than that the present case does not fall within the general rule which has been referred to; for, looking at the two documents,—the one signed by the chairman on behalf of the company, and the other signed by the plaintiff, and circulated at the request of the chairman, and acquiesced in by the company,—I think, upon a fair construction of these two instruments, and the facts stated in the bill, that, prior to the appointment of the provisional committee, some expenses were incurred by the plaintiff in promoting the scheme, to the payment of which he might be entitled. There can be nothing illegal in the contract, that he should, out of the deposits, be paid the expenses which had been incurred in the preparation of the scheme

adopted by the provisional committee on the 27th of August; and, if so, there will be sufficient to entitle the plaintiff upon the bill to some relief, whether he be or be not entitled to all he asks."

NOTICES OF NEW BOOKS.

The Act for the Enclosure of Commons in England and Wales: with a Treatise on the Law of Rights of Commons, in reference to this Act; and Forms as settled by the Commissioners, &c., &c. By GEORGE WINGROVE COOKE, Esq., of the Middle Temple, Barrister-at-Law. London: Owen Richards. 1846. Pp. 331.

THIS volume is a convenient manual for those who are engaged in carrying the provisions of the late act into effect for the inclosure of commons. It treats

1st. Of rights of common, and the several kinds of commons generally; 2. Of the several kinds of commons.

2nd. Of common of pasture: 1. Appendant; 2. Appurtenant; 3. In gross; 4. Pur cause de vicinage.

3rd. Of commons other than common of pasture: estovers, turbary, common in the soil, piscary.

4th. Of Wastes: 1. Common lands, the manorial waste, woodlands, stinted pastures, forests; 2. Commonable lands, lammas lands, shack.

5th. Of the creation, alienation, and extinguishment of rights of common.

6th. Of the rights of lords of the soil and of commoners: 1. Rights of the lord to approve—to common—to mines; 2. Rights of the commoner dependent upon custom or prescription. What customs are good.

7th. Of enclosure: 1. By the lord; 2. By agreement between the lord and the commoners; 3. By act of parliament; 4. By encroachments.

8th. Of the evidence in claims of rights of common.

Then follows the act 8 & 9 Vict. c. 118; and the Appendix contains the 2 & 3 W. 4, c. 71; with forms of application for enclosure, exchange, and division; notices; claims, &c.

The editor with becoming humility observes that—

"The introductory treatise is necessarily but meagre, when compared with the extent and importance of the branch of law of which it treats; and it was thought advisable to insert in it many rudimental matters which would have been omitted had it been addressed solely to the profession. It is hoped, however, that

it will be found a summary of the law sufficient for the ordinary necessities of parties enclosing under this act.

"All the forms which have hitherto been issued by the enclosure commissioners will be found in the Appendix, and the editor has been at some pains to collect from parties who have commenced enclosures under the new act such opinions of the commissioners upon the interpretation of the several clauses as have hitherto been intimated to those who have applied to them."

By way of example of the author's method of treating his subject, we shall extract the following from his first chapter, but must omit the notes from Paley's Moral Philosophy and the 13th chapter of Genesis:—

"Several of the writers upon the Law of Common Rights have exercised much industry in attempting to trace the origin of their subject; and some think they find it in the Agrarian Law of the Roman republic, and in the Licinian and other laws which were enacted to regulate the right so given. In truth, however, the right of common is indebted for its origin to no municipal law. It has always been co-existent with the disproportion of land to population; it grows restricted as that disproportion decreases; and it must everywhere disappear when the disproportion ceases. We might expect to find contests as to rights of common first occurring in a country where herbage was scanty; and accordingly we discern the first rude natural contest upon the subject of surcharging common lands in the disputes which arose between the herdsmen of Abraham and Lot.

"In our own country we have neither record nor tradition anterior to the existence of a property in land. Without entering upon the question of the origin of feuds and of manors, we may sufficiently understand, that since the time when the history of this island begins, a title has never been wanting in some person to every rood of land in Britain. There was everywhere some lord of the district, whose wealth was in proportion to the number of his retainers rather than to the extent of his lands. So long as the population was scanty, land was too abundant to be cultivated for pasture; after as much as the population could till had been parcelled out, with a reservation of services, there was still a large remaining waste, upon which the cattle used in tillage might pasture. The waste was the lord's, but its extent was beyond his power of occupation, and the tenants of his arable lands used it until he chose to reclaim it. Among a people whose passion for independence entered into all their institutions, that which was originally a right as against strangers soon grew into a right even against the lord himself. The protection and limitation of this right were probably among the earliest of the provisions of that traditional code which we call our common law.

"However this may be, it is certain that rights of common were known to our oldest text writers nearly as they are known to us at this day. Bracton, one of the earliest and most venerated of these, wrote upon this subject in the 13th century. He has a chapter on rights of common, which would not be out of place in a modern treatise; and even Bracton is compelled to cite anterior writers, and expresses himself frequently in terms drawn from the civilians.

"A right of common has been defined to be a right which one or more persons may have to take or use some portion of that which another person's soil naturally produces

"Rights of common are either appendant, appurtenant, in gross, or *pur cause de vicinage*.

"1. Right of common appendant is a right customarily annexed to the possession of arable land, by which the owner thereof is entitled to the use of the manorial waste for such purposes as are necessary to the maintenance of his husbandry.

"2. Right of common appurtenant is a right depending upon a grant or upon a prescription, which supposes a grant annexing to particular lands a right of user of a particular waste.

"3. Right of common in gross is a right depending upon a grant or prescription, entitling the possessor to some user of a particular waste, without reference to any tenure of land.

"4. Right of common *pur cause de vicinage* is the right which the commoners of adjoining wastes have of suffering their cattle to stray over each other's boundary.

"In these definitions it must be understood, that the word waste is intended to include all lands which are the subject of a right of common."

THE LEGAL ALMANAC, REMEMBRANCER AND DIARY, FOR 1847.

THE new edition of this work, which we consider to be peculiarly well adapted for the profession, has just been published for the ensuing year. It comprises a Calendar, in which,—besides the usual information of the terms, returns, sittings, and sessions,—the times are stated of legal proceedings, and the steps to be taken under the several statutes relating to juries, vestries, municipal corporations, highways, &c.

The list of the judges and officers of the superior and other courts, contains the several changes and promotions down to the time of publication, viz. :—

In Chancery, the Queen's Bench, Common Pleas, Exchequer, the Judicial Committee of the Privy Council, Admiralty, Ecclesiastical, Bankruptcy, Central Criminal, and Insolvent Debtors Courts.

Accompanying the list of officers connected with the several courts, the times of attendance as last altered are stated, and the holidays kept at each :—

Law offices and times of attendance :

Chancery Offices, Queen's Bench, Common Pleas, Exchequer, Admiralty and Ecclesiastical, Local Courts, Patent Office, Record Office, Registrars of Deeds, Commissioners for taking Affidavits.

Holidays :

Chancery Offices.

Common Law Offices.

The work also comprises the times of holding the Quarter Sessions, with lists of the Police Magistrates and Commissioners, and the Magistrates and Law Officers of the City of London; also the Colonial Judges and Law Officers.

Under the head of *the Bar* is comprised the Queen's Counsel and Serjeants, according to their rank or order of precedence, with the names of the Barristers called in 1845—1846; and the Regulations of the Inns of Court for the Admission of Students, and Calling to the Bar.

To which are added the following lists :—

Tithe Commissioners; Copyhold Commissioners; Recorders; Town Clerks; Clerks of the Peace; Clerks to the Magistrates.

The regulations at the Office of Registrar of Attorneys and Solicitors are stated, and a list given of the Examiners of Articled Clerks. The list of Provincial Law Societies is corrected to the present time, with the objects of the Incorporated Law Society and the United Law Clerks' Society. The list of Perpetual Commissioners under the Fines and Recoveries Act has been corrected from the London Gazette and from other sources, collected during the year.

Amongst the additions made since last year is a list of "Lawyers in Parliament," which will, no doubt, be found useful in the ensuing session, when new or old measures of Law Reform are under consideration. These "Honourable Members" should be called upon to protect the public and the profession from future mischiefs.

may concern, to the list of Government Solicitors, many of whom are Members of the Bar,—contrary, we are persuaded, to the *true interests* of both branches of the profession.

A list of Parliamentary Agents who are *solicitors*, is also given. None but solicitors should be allowed to act in the legal business before parliament.

In the present edition will also be found an Index to the General Acts *relating to the Law*, 1846.

A List of ad valorem and other Stamps.

A Table of Distribution of Intestate's Estate.

A Table of the Expectation of Life.

A List of Insurance Offices and Rates of Insurance.

A List of London Bankers; the Transfer and Dividend Days.

A Regal Table.

And a Diary for 1847, with times of Legal Proceedings under the various Statutes and Rules of Court. Half a page is allowed for the Memorandum of each day throughout the year, and where required, an interleaved copy may be procured.

PRACTICE OF THE JUDGES AT CHAMBERS.

A SERIES of Short Tracts on Practical Subjects, has recently been commenced by Mr. Moseley.* The subjects selected are such as he deems not of sufficient extent to constitute a volume, yet of such importance as to claim a consideration sometimes more full than they have received in works which, from the wide field they embrace, have been treated only incidentally. Each little work is designed to be complete in itself, and Mr. Moseley has made a judicious choice, in commencing the series, with the practice at the Judges' Chambers. He treats first of the power of judges; next of the summons, when granted, how served, and its effect on the pending proceedings; its attendance, &c. Then of orders, how enforced, and herein of costs, &c. And lastly, of appeals from the judges' decisions; affidavits, &c.

POWER OF JUDGES AT CHAMBERS.

The cases and other authorities regarding the judges' power, are carefully collected as follow:—

"The history of the authority of the judges at chambers is somewhat obscure and uncertain. (*Vide per Wilmot, C. J., in Rex v. Almon, Wilmot's Notes, 264.*) It is said to have been exercised time out of mind, and to have arisen from the overflow of business to the court, (*per Yates, J., in Rex v. Wilkes, 4 Burr. 2571.*) so to be a constant and immemorial usage, sanctified and recognised by the Courts of Westminster Hall, and in many instances by the legislature; and now become as much a part of the law of the land as any other course of practice, which custom has introduced and established. (*Per Wilmot, C. J., in Rex v. Almon, Wilmot's Notes, 264.*) So it is said to be matter of tradition, to be learnt of the officers of the court.

(*Per Lord Mansfield, 4 Burr. 2566.*) But however antient the power of a judge at chambers may have been, the extensive practice to which it is now applied is of comparatively recent date. Thus it is said by *Wilmot, C. J., (in Rex v. Almon, Wilmot's Notes, 264.)* that after careful search by himself and Mr. Dunning, no account of the practice of summonses had been found, and the case of the mayor of Maidstone, (*Popham, 180.*) was the earliest in which mention was made of them, and that, though reference to them is made by Lord Coke, these appear to have been rather like highly irregular instances than an established lawful practice. (*Vide per Wilmot, J.; in Wilmot's Notes, 264.*) And it would appear that summonses and orders did not form any important part of the practice of the courts till the time to which Barnes' Notes in C. P. refer, for, except the case above referred to, there appears to be no mention of summonses or orders in any of the reports anterior to these. And indeed, on reference to Vin. Abr. (title, Venue.—Change of,) it will be seen that up to the time to which those reports extend, the venue was changed by motion to the court, and after that time by application to the judge at chambers. So it appears that amendments of pleadings were formerly made by motion to the court, as late as the time of King William and Queen Anne. (*Vide 10 Mod. 88—Salk. 47.*) And there is no doubt that, till recently, whenever the court were sitting on in term time, the proper course was to apply to a court and not to a judge.

"But at whatever time the practice of judges at chambers may have come into use, it is pretty clear for what object it was introduced, viz.: 'for the ease and convenience of the suitors of the court—to accommodate them at a much easier expense, and with less trouble in a great variety of cases, especially in vacation time, when there was a great multiplicity of business; and the saving of the time of the court in adjusting trifling matters, which might be so much better employed in momentous ones, was no inconsiderable motive in establishing it.' (*Per Wilmot, J., in Rex v. Almon, Wilmot's Notes, 264.*) And in adopting this easy and expeditious mode of regulating the proceedings in actions, the courts only exercised their ordinary powers. For all judges have, by common law, authority to alter and modify the proceedings of their courts, a power so frequently used by them by means of rules and orders, &c. And this in pursuance of that general authority which they have by implication of law, of doing all things necessary for carrying out the jurisdiction which they hold, as of appointing necessary officers, (*Metcalf v. Worsely, 1 Roll. Abr. 526.*)—of issuing process, (*2 Roll. Abr. 277.*)—of granting imparlances, (*1 Salk. 408.*)—even where no such power on the creation of the court is granted to them. And this probably in pursuance of the civil law maxim, *Cui jurisdictio data est, ea quoque concessa esse videntur sine quibus jurisdictio explicari non potuit, D. 2, 1, 2.*

"And it is to this power, probably, to which

* Law Tracts, by J. Moseley, Esq., Barrister-at-Law. No. 1. Summonses and Orders. Stevens & Norton, 1846. Pp. 48.

Baron Bayley refers, when he says, 'that since the Uniformity Process Act, a judge at chambers is in a very different situation to what he was before that act: a great deal of new business is now thrown upon him, and, though the act does not certainly give power to a single judge in express terms, it seems implicitly given him in some cases, as where the declaration is delivered in vacation and is irregular, cannot an application be made to a judge to set aside the declaration with costs?' (*Hughes v. Brand*, 2 Dowl. 132.)

As to the light in which a judge, sitting at chambers, is to be considered, and whether he represents, or rather constitutes, a whole court, or is to be considered rather as an officer appointed by the court to decide upon incidental questions which may arise in the course of an action, appears to be a point of difficulty. In *Rex v. Almon* (Wilmot's Notes, 265, 266,) the court clearly seemed to hold, and indeed acted upon the first position, viz., that a judge at chambers exercised the full authority of the court, and fully represented it the same as if the court itself were there, and the same as he would at the side bar. So it was said by Tindal, C. J., that 'The authority of a judge sitting in chambers to make orders, when considered on principle, is the authority of the court itself, for no order which is made can be enforced by attachment until it has been first made a rule of court; and a party who disputes the propriety of the order has the opportunity, in the present instance, to question its validity by application to the court. On any other principle it is difficult to account for the validity of many acts done by a single judge at chambers, such as setting aside irregular judgments, signed in vacation, which judgments are to be considered on principle the acts of the whole court, discharging persons under writs of execution improperly taken out, and the like.' (*Per Tindal, C. J.*, in 9 Bingh. 104, 2 M. & Sc. 119.) It does not, however, clearly appear in this last decision to have been held that the court itself is to be supposed as actually sitting at chambers, for the judge's authority may be 'the authority of the court itself, and his judgments considered as the acts of the court,' as done through him as the deputy of the court, without supposing the court actually present, the same as many other acts done by the officers of the court, as the masters, prothonotaries, &c., are considered substantially as the acts of the court. The words, however, would appear, perhaps, on the whole, as confirming the principle laid down in *Rex v. Almon*, and as such are liable to some objections. For if the court must 'adopt' the decision of the judge at chambers, by making it a rule of court before they can act upon it, as by issuing an attachment for disobedience to it, it would appear that it was not originally the act of the court. Again, if any one judge can thus completely represent the whole court, the court may be sitting in five different places at once. So if the decision of a judge at cham-

bers is the decision of the whole court, an appeal from his decision must be to a court of error. And lastly, as already has been observed, that originally a judge at chambers only had authority to act out of term time, when the court had no power to sit at all, much less by a judge at chambers, so that if his power were only that of the court it could never have existed. The two first of these objections were adverted to in *Rex v. Almon*, (Wilmot's Notes, 264, 265,) but scarcely appear to have been satisfactorily answered.

Besides this authority of a judge at chambers by common law, they have an extensive authority cast upon them by various statutes, to act in certain matters not of sufficient importance to require the judgment of the whole court, or of a nature requiring a speedy and summary decision. And whenever such power is conferred by statute, or otherwise, the judge will have just precisely so much original power as is contained within the words of the statute and no more, for all delegations of judicial power are construed strictly. And, therefore, if he exceed his authority in any degree, or do not act up to it in a manner pointed out, or in any way deviate from the authority as given, his acts will be void. But when once the extent of the original power granted is ascertained, every thing necessary for carrying out that power will be implied. And, therefore, where an authority is given to a judge at chambers to hear and determine certain matters, he will have power of summoning the parties, &c., and doing all things necessary for carrying out the powers granted. (*Vide Metcalf v. Worsley*, 1 Roll. Abr. 526.—2 Roll. Abr. 277.—1 Salk. 408.) But probably only such powers as judges at chambers usually have in like matters.

"As above remarked, the authority of a judge at chambers, whether it accrue to him by custom of the court, by statute, or rule of court in pursuance of such statute, must be pursued strictly; and to do this, since the power which he holds is for the public benefit, he must exercise it up to the full limits to which it extends, and yet not one tittle beyond it. And when it appears from the practice, or from express or implied words of a statute, (as where he is to use his discretion,) that the decision of a judge at chambers is to be final, the court above cannot and will not interfere. (*Parkes v. Edge*, 1 Cr. & M. 429.—*The King v. Archbishop of York*, 1 Ad. & El. 397.—So also it must be used in the manner pointed out by custom or Act of Parliament, &c., by which it is created. And it is said by Lord Mansfield, that the practice of the judge at chambers is matter of tradition, resting on the memory of the officers of the court, of whom the judges, as in other matters of practice, will inquire. The books, however, such as the reports, are evidence, no doubt, of what the judges, by the advice of the officers, have heretofore determined to be the practice. And this practice is binding on the judge, for though in deciding

on the merits of the application, &c., he may and does in most cases use his discretion; yet so far as the bringing the application before him and dispensing it, &c. is concerned, he is bound by the practice of the court, which is part of the law of that court. So the power of a judge at chambers must be used in accordance with the line pointed out by the custom or statute creating it. And, therefore, where by a custom or statute a judge at chambers has power to grant an order only out of term, an order made in term time will be void. So, no doubt, if the particular place for making a summons or order, as on circuit or at chambers, were pointed out, it must be followed. So the power of judges at chambers, to grant summonses and orders, whether it accrues by statute or by custom, like all other powers in law, can be exercised only by those on whom, by statute or by custom, it is strictly conferred.

APPEAL FROM JUDGE'S DECISION.

The judge's decision may be impeached either by application to himself or by motion to the court. Under these two heads the cases are thus arranged and examined:

1. By Application to the Judge.

"If a party be dissatisfied with the decision of a judge at chambers, he may have such decision reviewed by taking out another summons, returnable before a judge. But where the second decision will in any way impugn the former, application should be made to the judge who made the first, for it has been said to be highly irregular to make an application to a judge at chambers for an order which has already been refused, or to set aside an order that has already been made by another judge, or in any way to attempt to impeach the decision of one judge by that of another: and though the summons will be granted by any judge, yet no judge will entertain a matter at chambers that has already been adjudicated on by another, but will refer the parties to the same judge. (*Wright v. Stevenson*, 5 Taunt. 850.—Per Park, J., in *Johnson v. Kennedy*, 4 Dowl. 346.) But if the judge who made the order is not at chambers, or is on circuit, and the matter be pressing, a summons may no doubt be taken out before the judge who is at chambers, and all these facts being stated before him, he will use his discretion, and adjudicate on the matter, or refer the party to the other judge, as he thinks fit. And if there be any alteration of the facts so that a new decision will not in any way impugn the former, there is probably no objection to taking out the summons before another judge.

2. By Motion to the Court.

"So the order of a judge may be set aside by application to the court above, and this it is said though the decision of the case were

on the merits. (*Pike v. Davis*, 8 Dowl. 387. And, as has been remarked, the court will not review the decision of a judge at chambers, in matters in which, either from the express words of the authority by which he acts, as of an Act of Parliament, or in matters from the very nature of which he must act at his discretion. So the court will not review a judge's order if it has been made by the consent of the parties and that appears on the face of it, but if it be irregular, application should be made to the judge who granted it and he will set it aside. But when parties have consented to a judge's order to act as for judgment debt and costs, but something remains to be done by the court, in order to carry out the act, as allowing the judgment to be signed, the court may and will interfere and set aside the judge's order. Therefore, when an order or agreement of the parties for the payment of the debt and costs was made by a judge, and before the day of payment the defendant discovered new evidence which would enable him to prove his plea, the court, on application, set aside the order of the judge. (*Wade v. Simeon*, 2 Dowl. & L. 658.) But the Court of Common Pleas refused to set aside an action which had been brought there on the agreement on which this order had been made. (*Wade v. Simeon*, 3 Dowl. & L. 27.) And wherever a judge is expressly or impliedly vested by a statute with discretionary power in deciding on any matter in which he is to guide his determination according to the facts of each particular case there, his decision will be final and not liable to be set aside by the court above. (*Lench v. Pargiter*, 1 Dowl. 68.—*Parks v. Edge*, 1 Cr. & M. 429.—*The king v. the Archbishop of York*, 1 Ad. & El. 397.) But the court will hear the argument, if it be desired by the learned judge before whom the point was raised at chambers, not delivering any judgment but communicating their opinion to the learned judge, and leaving him afterwards to make his order at chambers. (*Smith v. Bird*, 3 Dowl. 643.)

"As to where the Judge will have a discretionary power or not must depend upon the words of each act or rule. Thus, it has been held that the Court above will review the decision of a judge at chambers, where in pursuance of the R. G. H. T. 4 Will. IV., he has decided as to whether two counts or two pleas were founded on the same subject matter, but they will not review his decision, where in pursuance of sixth rule he has upon its appearing to him that some distinct subject matter of complaint, or defence, was intended to be set up under each of the two counts or declarations, because in the former case he had not discretionary power, but in the latter he had. (*Jenkins v. Treloar*, 1 M. & W. 16.—*Chalmondeley v. Payne*, 3 Bingh. N. C. 708.) So where, under Lord Tenterden's Act, the 9 Geo. IV. c. 15, which provides that if a court or judge shall think fit so to do to cause the record on which any trial may be pending, before any such judge or court, in any civil action, or in

any indictment or information for any misdemeanour where any variance shall appear between any matter in writing or print produced in evidence, and the recital and setting forth thereof upon the record whereof the trial is pending, to be forthwith amended in such particular by some officer of the court, on payment of costs, if any, to the other party, as such judge or court shall think reasonable, it was said by Bayley, B., 'I entertain great doubt whether it will not be exclusively for the discretion of the judge, and at present I am of opinion that it is not competent for this court to review the discretion of the judge.' So where a judge at chambers had made an order for amending the issue, by adding counts to the declaration, and an application was made to the court to set aside the order, it was said by Lord Denman, that 'As the application was to a judge for an indulgence, and an exercise of his discretion, the court had hardly authority to interfere, at least could not do so with propriety.' And J. Patteson in the same case said, 'I must protest against the doctrine being received, that wherever a judge at chambers has exercised his discretion in a matter that his decision is liable to be reviewed on motion to the court above.' So, where under the Lords' Act a judge at chambers, during vacation time, had power to order a poor debtor to be discharged, 'Proof being made before such judge of the non-payment by his creditor of 2s. 4d. a week' as required by that statute, it was said by Ld. Mansfield, that as the judge below 'Had a complete authority, I do not see how the court can control the order.' (*Lench v. Pargiter*, 1 Dowl. 68.) From these cases it would appear, that whenever a judge at chambers receives an authority to do certain acts at his discretion, that is according as he thinks fit on consideration of the peculiar facts of the particular case, his decision is not liable to be reviewed by the court above."

This subject of the practice at the judges' chambers was well treated by Mr. Bagley about twelve years ago, and in noticing his work we took occasion to suggest an improvement in the practice, of which time has not diminished but rather increased the necessity, and we shall venture to repeat the suggestion. It is this:—

That the judges should arrange amongst themselves that one of their lordships should hold a *permanent sitting* at chambers, and decide all interlocutory matters in all the common law courts, instead of sitting in rotation, and for a few hours only. The advantages of such an arrangement appear to be manifestly great. The practice would be uniform. It would be better known. Business would be more easily despatched by the judge, and arrangements made by which both the bar and the attorneys might be accommodated

in the order of their attendance,—specific hours being fixed for each class of business.

Many objections, however, are made to this suggestion; the strongest of which we believe are, that the judge who constantly attended at chambers, and never sat in court, would degenerate as an efficient judge in other and higher matters; and that, in fact, the decisions at chambers would ultimately be less satisfactory than they are under the present method. Perhaps some middle course might be adopted which, accomplishing much of the anticipated advantages of a permanent chamber judge, would avoid the evil contemplated in the objection. For instance, the junior judge of each court might take the duty in annual rotation, and be attended by a competent officer, as registrar or chief clerk, who should make a periodical report of the points of practice determined, so as to secure the objects of uniformity and publicity. We incline to think that the administration of justice in interlocutory matters might be thus much improved, and the time of the court materially saved in the discussion of technical and minor matters.

On some occasions one of the Masters has attended at chambers, and satisfactorily assisted the judge in the despatch of business. This has led to the suggestion of permanently confiding all the routine business of one of the Masters in rotation. This large increase of their duties would, however, require a proportionate increase of remuneration, and we believe the Chancellor of the Exchequer, is not inclined to sanction the expense.

BARRISTERS CALLED.

Michaelmas Term, 1846.

LINCOLN'S INN.

19th Nov.

Arthur Currey, Esq.
John L. Griffith P. Lewis, Esq.
John Walter, jun., Esq.
Robert Jones, Esq.
Charles Gifford, Esq.
George Druce, Esq.
Peter Robert Hammond, Esq.

24th Nov.

Robert Eyre Todd, Esq.
Francis Edward Guise, Esq., M. A.
George Chance, Esq., M. A.
Thomas Englesby Rogers, Esq., M. A.
Paul Augustine Kingdon, Esq., M. A.
Alfred Martineau, Esq., M. A.

Hon. George Denman, M. A.
Charles Turner Simpson, Esq., M. A.

MIDDLE TEMPLE.

6th Nov.

Augustus Frederic Bayford, LL. D.
James Cockle, Esq.
Arthur Becher Pollock, Esq.
John Hindmarsh, Esq.
George Brookes Van Buren, Esq.
John Duke Coleridge, Esq.
James Jones Aston, Esq.
Patrick Leneghan, Esq.
Walter Mills, Esq.
Clement Milward, Esq.
Henry Leeming, Esq.

20th Nov.

James St. George Burke, Esq.
John Gordon, Esq.
Francis Hugh Daly, Esq.
Samuel Sharpe Horinan Horman Fisher, Esq.
Robert John Pollock, Esq.
Jonathan Schweitzer Skelton, Esq.
John Warrington Rogers, Esq.
Joseph Lee, Esq.
Nathaniel Warner Bromley, Esq.
Aeneas John McIntyre, Esq.
James Traill Christie, Esq.
David Cato Macrae, Esq.
Samuel Shepherd, Esq.
Thomas Weatherly Montague Marriott, Esq.
Henry Collinson, Esq.
James Glenie Price, Esq.
Nicholas Edward Hurst, Esq.

INNER TEMPLE.

20th Nov.

George Hibbert Deffell, Esq., M. A.
Burton Archerburton, Esq., B. A.
Edward Francis Halsall, Esq.
Augustus Frederick Mayo, Esq.
Richard Meredith Richards, Esq., M. A.
Tom Taylor, Esq., M. A.
John Best, Esq., B. A.
James William Fergusson, Esq., B. A.
John Coucher Dent, Esq.
Samuel John Wilde, Esq.
Frederick Kingston, Esq.
Matthew William Thompson, Esq., M. A.
Charles Cavendish Clifford, Esq.
Robert Anstruther Strange, Esq., M. A.
Samuel Lucas, Esq.
Alexander Kyd Curtis, Esq., M. A.
George Henry Money, Esq., M. A.
Stephen Cave, Esq., M. A.
Charles Griffith Smith, Esq., M. A.
Thomas Francis Crosse, Esq., B. C. L.
John Charles Conybeare, Esq., M. A.

GRAY'S INN.

18th Nov.

Timms Augustine Sargood, Esq.
Robert Rouiere Pearce, Esq.

NOTES OF THE WEEK.

INTENDED SMALL DEBTS COURT IN THE CITY OF LONDON.

NOTICE has been given of an application to parliament, in the next session, for an Act for the more easy Recovery of Small Debts and Demands in the City of London and the liberties thereof; and for that purpose, either to constitute a new court in the nature of a county court, or to amend, extend, enlarge, vary, or alter and regulate the jurisdiction, practice, and proceedings of the Sheriffs' Courts, or of any of the other existing courts in the City of London; and to appoint a judge or judges to hold or preside in such new or existing court or courts; and for making provision for the regulation and management of such new or existing court or courts, and for authorizing such judge or judges to hold such court within the said city.

It is intended to provide by the act for defraying the general expenses of the court or courts by and out of the fund to be created for such purpose, and to fix and regulate the fees to be taken by the several officers of the court or courts; and to repeal an act passed in the 5 & 6 Will. 4, entitled "An Act for amending and consolidating the Acts of Parliament for the Recovery of Small Debts in the City of London and the Liberties thereof, and for enabling the Goods of the Debtors to be taken in Execution;" and to abolish the court thereby established, and to vary, alter, or extinguish all existing rights and privileges which can in any manner interfere with or prevent the carrying out or execution of the objects and purposes aforesaid.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Law of Wills.

ACCUMULATION.

Thellusson Act.—The *Thellusson Act* applies not to cases in which there is merely an executory devise or bequest, but only to those cases in which there is an express trust for accumulation; and if that trust exceeds the time prescribed by the act, the next of kin, or the heir of the testator, (according to the nature of the property,) and not the residuary devisee or legatee, is entitled to the income accruing after the expiration of the prescribed time. The decision in *Macdonald v. Bryce*, 2 Keen, 276, disapproved of. *Elborne v. Goode*, 14 Sim. 165.

Cases cited in the judgment: *Stephens v. Stephens*, Ca. Temp. Talbot, 228; *Rogers v. Gibson*, Amb. 93; *Griffiths v. Vere*, 9 Ves. 127; *Longdon v. Simpson*, 12 Ves. 295; *Eyre v. Marsden*, 2 Keen, 564; 4 Myl. & Ca. 231.

And see *Cy pres*.

ADEMPMENT OF LEGACY.

1. A legacy given to *M.*, with a contingent

limitation over to *N.*, in the event of *M.* dying without children. The legacy to *M.* is admeared by a subsequent gift to *M.*, in the lifetime of the testatrix, to which no limitation in favour of *N.* is attached. The legacy is not merely admeared as to *M.*, but also extinguished as to *N.* *Twining v. Powell*, 2 Coll. 262.

2. A testatrix, *in loco parentis* to *A.*, bequeathed 10,000*l.* sterling to *M.*, and afterwards transferred 12,000*l.* consols into the joint names of herself and *M.* *Held*, under the circumstances of the case, that the transfer was an ademption or satisfaction of the legacy. *Twining v. Powell*, 2 Coll. 262.

ADMINISTRATION.

Semble, that the Ecclesiastical Court will not grant full letters of administration of an intestate's effects to any person, unless he is either a creditor of the intestate, or is interested in the estate under the Statutes of Distribution. *Davis v. Chanter*, 14 Sim. 212.

ALIENATION.

Restraint on.—*Insolvent.*—Testator, after giving several annuities, begged it to be understood, that if any of the annuitants should attempt to sell or dispose of their interest in his annuities to them, (which he wished only for their peculiar and particular benefit,) from that moment his bequest to them was to terminate for ever, and the principal and interest of each bequest to revert to the general fund. One of the annuitants petitioned for the benefit of the Insolvent Debtors' Act, having entered the annuity in his schedule, and afterwards the usual vesting order was made by the Insolvent Debtors' Court.

Held, that this annuity ceased on his presenting the petition. *Martin v. Maugham*, 14 Sim. 230.

And see *Married Woman*.

ANNUITIES.

1. A testator devised his real estates to trustees in fee, on trust, "out of the rents, issues, and profits," to pay certain life annuities, and by sale or mortgage to raise money for payment of his debts, &c., and then to settle the estates, to the use that the annuitants should receive their annuities out of the same premises, with powers of distress and entry, and subject thereto, to one for life, with remainder over. *Held*, that the annuitants were not entitled to be paid the arrears out of the corpus, though the rents were insufficient to keep down all the incumbrances. *Philipps v. Philipps*, 8 Beav. 193.

2. Upon a devise of real estates, in trust to receive the rents, and thereout to pay to the testator's widow an annuity, and "from and immediately after her death" to convey the estates to his three sisters. *Held*, (reversing the decision below,) that the annuity was a charge only on the rents which accrued during the life of the widow, and not on the corpus of the estates. *Foster v. Smith*, 1 Phill. 629.

And see *Chatte! Interest*.

APPOINTMENT.

See *Power*.

APPROPRIATION BY EXECUTORS.

Testator distributes a sum of stock, except a small part, amongst certain legatees, as to one of whom, *X. Y.*, he uses expressions of resentment, and says, that the bequest is more than she deserves. By a codicil, he leaves the surplus stock to be appropriated, as his executors think proper, among the several legatees. The executors, in appropriating the stock, cannot omit *X. Y.* *Inglefield v. Coghlan*, 2 Coll. 247.

CHARITY.

See *Cy Pres*.

CHATTEL INTEREST.

Chose in action.—*Priority.*—Testator bequeathed a leasehold estate to trustees, upon trust as therein mentioned: and first, he charged the estate with the payment of an annuity to his daughter during all his interest in the estate. The daughter afterwards mortgaged her annuity, first to *A.* and afterwards to *B.*; but *B.* gave the trustees notice of his mortgage before *A.* did. *Held*, that the annuity was not a chose in action, but a chattel interest; and that *B.* had not gained any priority over *A.* *Wiltshire v. Rabbitts*, 14 Sim. 76.

CHATELS.

Devise of the house in Camden Place, and "all therein," to *M.* for life: "at her death I give and bequeath the house, &c., to my nephew *T.* and his heirs." After the death of *M.*, *T.* is entitled to all the chattels which were in the house at the testatrix's death, except the consumable articles. *Twining v. Powell*, 2 Coll. 262.

CHILDREN.

Nephews and nieces.—Testatrix bequeathed as follows;—"To my niece, *M. M.*, daughter of my nephew *T. M.*, 30*l.* To *A. L.* and *M. L.*, son and daughter of my late niece *M. L.* 30*l.* each." And she gave all the residue of her property, not thereafter disposed of, unto and equally to be divided amongst all her nephews and nieces. Afterwards she gave a specific legacy to *M. L.*, and described her as her niece. *Held*, that, by the words, "my nephews and nieces," in the residuary bequest, the testatrix meant not only her nephews and nieces, but their children also. *James v. Smith*, 14 Sim. 214.

CODICIL.

See *Revocation*, 4.

CROWN.

Bona vacantia.—*Escheat.*—Testatrix gave her real and personal property to *A.*, *B.*, and *C.*, their heirs, executors, &c., in trust to sell the same immediately after her death, and to stand possessed of the produce, in trust for such persons as she should direct by a codicil. But she did not make any codicil, nor did she leave heir or next of kin. After her death, *A.*, *B.*, and

C. sold her real estates. *Held*, that they were entitled to the proceeds for their own benefit; and that the crown was entitled to the personal estate. *Taylor v. Haygarth*, 14 Sim. 8.

Cases cited by the court: *Middleton v. Spicer*, 1 Bro. C. C. 201; *Walker v. Denne*, 2 Ves. jun. 185; *Attorney-General v. Henchman*, 3 Myl. & Keen, 494.

CY PRES.

Accumulation.—*Charity.*—The testator directed funds to be provided for certain charity schools, by accumulating his property, but fixed no time for the continuance of the accumulation, which must necessarily have exceeded the legal period.

The court held the direction to accumulate to be void, and consequently the ulterior dispositions of his will to fail; but, as the testator had shown an intention to devote his property to charitable purposes, it directed his intention to be carried into effect, *cy pres*, by means of a scheme to be settled by the Master. *Martin v. Maughum*, 14 Sim. 230.

DEVISE.

1. *Construction.*—A general gift of the corpus of a fund to the children of A., described as "her children," after a previous gift of the interest to her for the maintenance of her children, W. & R. *Held*, to be confined to the two beforesaid, and not to include after-born children. *Connor, in re*, 8 Ir. Eq. Rep. 401.

Case cited in the judgment: *Mortimer v. West*, 3 Russ. 370.

2. Testator, having freehold, copyhold, and leasehold estates, some of which were within the liberties of the city of H., and others within the county of H., but out of the liberties of the city, devised all his freehold, copyhold, and leasehold tenements in the city of H. or the liberties thereof, in the county of H., and his two leasehold houses on Ludgate Hill, in the city of London, to trustees in trust to sell. In a codicil he spoke of the sale authorized by his will of his estates in the city and county of H. *Held*, that the estates in the county of H., but out of the liberties of the city, did not pass by the devise to the trustees. *Moser v. Platt*, 14 Sim. 95.

And see *Uncertainty*.

DONATIO MORTIS CAUSA.

A person, having some Dutch bonds and the title-deeds of certain estates, which he keeps in a box, delivers the key of the box to J., in whose house he lives, and with whom he is on terms of intimacy, and tells a third person that the contents of the box belong to J. H., however, keeps possession of the box, directing J. to open it from time to time as occasions require. He also receives the dividends due on the bonds. A few weeks before his death, being in his 80th year, and infirm in health, he directs his nurse to deliver the box to J., which she accordingly does; and J. keeps the box till his death. Upon the box being subse-

quently opened, the envelope in which the bonds are contained is found to be addressed, in the handwriting of the deceased, to the wife and sisters of J., with a direction that it is to be delivered "unopened;" and attached to the envelope is a letter addressed by the deceased to the same persons, stating the shares in which each is to have the benefit of the bonds, stating also, by way of postscript, to J., that the writer takes this course solely to evade the legacy duty, and that he recommends perfect silence on the subject. The transaction amounts neither to a gift *inter vivos*, nor to a *donatio mortis causa* in favour of the wife and sisters of J. *Farquharson v. Cave*, 2 Coll. 356.

ELECTION.

Widow.—*Priority.*—A testator leaving freeholds and copyholds in fee, gave an annuity to his wife, in lieu and satisfaction of all dower and thirds, or other claims and demands which she might otherwise have had upon his estate, and died intestate as to his real estates. His widow was his customary heir.

Held, that she was not bound to elect between the annuity and the copyholds, but was entitled to both.

Held, also, the assets being deficient, that the annuity was to be paid in priority to the pecuniary legacies given by the will. *Norcott v. Gordon*, 14 Sim. 258.

Cases cited in the judgment: *Burridge v. Brady*, 1 P. W. 126; *Heath v. Dendy*, 1 Russ. 513.

ERASURE.

See *Revocation*.

ESCHEAT.

See *Crown*.

FUNDS.

Greek bonds.—Testator directed all his property, except ready money or monies in the funds, to be converted into money, and the clear monies arising from such conversion to be invested in the names of the executors, in 34 per cent. consols, or other government securities in England. *Held*, that Greek bonds, though guaranteed by this country, were not comprehended in the word "funds," and that they were a proper subject of conversion under the terms of the will. *Burnie v. Getting*, 2 Coll. 324.

GUARDIANS.

Testator gave part of his property to A., B., C. and D., upon certain trusts, for the benefit of his children, and gave the guardianship of them to his wife and his trustees, the said A., B., C. and D., who were to maintain and educate them out of the trust-property. By a codicil, reciting that he had appointed A., B., C. and D. executors and trustees of his will, he revoked the appointment so far as regarded B., C. and D., and, in lieu of them, appointed E. and F. to act as trustees and executors of his will along with A.

Held, that the appointment of B., C. and D. to act as guardians to the children, jointly with A., remained unrevoked. *Park, in re*, 14 Sim. 89.

HEIR.

Personal representative.—A lessee of lands demised to him, his heirs and assigns, *pur autre vie*, devised all his real, freehold, and personal property to his wife and children, share and share alike. One of the children who survived the testator, died intestate: *Held*, that his heir-at-law, and not his personal representative, was entitled to his share of the freehold lands. *Wall v. Byrne*, 2 J. & L. 118.

Cases cited in the judgment: *Blake v. Jones d. Blake*, 1 Hud. & Bro. 227, n.; *Philpot v. James*, 3 Doug. 425.

LEGACY.

1. *Specific.*—Testatrix, by her will, gave 15,000*l.* reduced annuities, "part of a larger sum standing in my name," to S. J., and 3,500*l.* life annuities, "being further part of such annuities standing in my name," to J. L. By her second codicil, after reciting that by her will she had bequeathed 15,000*l.* reduced annuities standing in her name to S. J., and that she was desirous of making a further provision for J. W., another legatee, she revoked the bequest to S. J. so far as related to the sum of 6,000*l.*, "part of the said sum of 15,000*l.* reduced annuities," and directed her executors, as soon as conveniently might be after her death, to transfer to J. W. "the said sum of 6,000*l.* reduced annuities;" and, after further reciting that, by her will, she had bequeathed 3,500*l.* "like reduced annuities" to J. L., and that she was desirous of increasing such bequest, she thereby revoked the last-mentioned bequest, and in lieu of it gave 4,500*l.*, "like reduced annuities," to J. L. By her third codicil, she, in order that J. W. might have the full benefit of the bequest of 6,000*l.* reduced annuities given to him by her second codicil, directed that such legacy should not be subject to any deduction for legacy duty or other charges, and that the same should be transferred to him before and in preference to any other legacies or bequests given by her out of or as part of her reduced annuities.

The testatrix had 21,000*l.* reduced annuities standing in her name at the date of her will. At the date of her second codicil that sum was reduced to 18,300*l.* like annuities; at the date of her third codicil it was reduced to 16,700*l.* like annuities; and at her death it was reduced to 16,100*l.* like annuities. *Held*, that the legacy of 4,500*l.* "like reduced annuities," given by the second codicil to J. L. was not a specific, but a general legacy; and that J. W. was entitled to have 6,000*l.* reduced annuities transferred to him out of the 16,000*l.* like annuities, without any deduction or abatement whatever. *Johnson v. Johnson*, 14 Sim. 313.

2. *Specific.*—Testator willed that his wife should receive the interest of "all the property I possess in the public funds, for her life." *Held*, that the wife was entitled to receive the income of all the property which the testator had in the funds at the date of his will, and in its then state of investment, notwithstanding it consisted of long annuities. *Cockran v. Cockran*, 14 Sim. 248.

3. *Absolute.*—Testatrix gave a sum of money to her children who should be living at the time of her decease; and in case she should die without leaving any such issue over; and having a power to appoint to the children of D., she gave 2,000*l.*, part of the fund, to the separate use of A., (one of the children,) and if she died without issue by her then present husband or any other she might thereafter take, the 2,000*l.* to be divided amongst other objects of the power. *Held*, that A. was absolutely entitled to the 2,000*l.* *Caulfield v. Maguire*, 2 J. & L. 142.

4. *Absolute bequest.*—Testator, having 7,300*l.* stock, bequeathed to his nephew, J. C., 200*l.* stock, part of the aforesaid 7,300*l.*, in order that he might be effectually enabled to resist by law any attempt to deprive him of the little property which he and his connexions possessed at Crookhaven; and in order the better to deter any person from attempting the same, he requested that 200*l.* of the above-named stock should be placed in the National Bank of Ireland, subject to the control of the said J. C., and the testator's niece, M., should it be found necessary to call for or remove it from the bank, to defend any attempt that might be made to dispossess them. On no other account was the said 200*l.* stock to be removed from the National Bank; but the interest of the same might, nevertheless, be drawn for the use and benefit of the said J. C.; the principal to continue in the bank for ten years after the testator's death, at the expiration of which time it might be withdrawn for the benefit of his family, provided no threat or intimation of a claim was made against the property. The property was recovered by law against J. C., in the testator's lifetime, and the testator paid the costs of the action: *Held*, that J. C. was entitled to two legacies of 200*l.* stock each, absolutely. *Inglefield v. Coglan*, 2 Coll. 247.

See *Morrall v. Sutton*, 4 Bea. 478; 5 Bea. 100; *Reece v. Steel*, 2 Sim. 233.

5. *Double.*—Testator, by codicil, gave legacies of 500*l.* each to A., B., C. and D., who, from other parts of the codicil, and from the will, appeared to be grandchildren of his brother Henry. He added:—"Item. I direct my executors to pay out of my personal estate the sum of 500*l.* a piece to each child that may be born to either of the children of either of my brothers lawfully begotten, to be paid to them on his or her attaining the age of 21." At the date of the codicil, and at the testator's death, there were, to his knowledge, living, several grandchildren of his brothers, besides A., B., C. and D., and various children of the brothers of the testator, and the testator was survived by one, at least, of his brothers: *Held*, that A., B., C., and D. were not entitled to double legacies. *Early v. Benbow*, 2 Coll. 342.

6. *When vested.*—Testator having three illegitimate children, (two sons and a daughter,) gave 18,000*l.* to trustees, in trust, out of the interest to pay 100*l.* a year, for the maintenance and education of each of them during their minorities, and to accumulate the residue and add it

to the principal, and to pay one-third of the aggregate fund to each of his sons on his attaining 21, and out of the remaining third, to pay 1,000*l.* to the daughter on her attaining 21, or marrying under that age, with the consent of the trustees, and to stand possessed of the residue in trust for her separate use for her life; and the testator directed all the legacies given by his will to be paid within three months after his death. The sons attained the age of 21 in the testator's lifetime, and the daughter married under that age, with the testator's consent : *Held*, that the legacies to the sons and daughter became payable on the testator's death, and consequently they bore interest from that time. *Coventry v. Higgins*, 14 Sim. 30.

7. *Choice by legatee*.—If a testator, dying insolvent, bequeaths to *A.* a certain number of articles, forming a part of a stock of articles of the same description, as, for instance, if he has 20 horses in his stable, and he bequeaths to *A.* six of them, *A.* has the right of selection. *Jacques v. Chambers*, 2 Coll. 435.

8. *Railway shares*.—A testator, at the time of his death, was entitled to 120 shares in the Great Western Railway Company. For 38 of these he had been an original subscriber, and signed the parliamentary contract, undertaking to pay the amount subscribed within 10 years, to the directors appointed by the Railway Act. The remaining 82 shares had been purchased by him as scrip. By the act, which was passed in his lifetime, the directors had power to compel payment of the money subscribed, and also to make calls, and to enforce the payment of such calls by action, or otherwise to declare the shares forfeited, and to sell the shares. The act also gave the proprietors of shares the right of sale and transfer, declaring, in effect, that the vendor ceased to be liable for calls after a proper memorial of such sale and transfer. All the calls had not been paid on the shares at the time of the testator's death. After his death, the company passed a resolution, declaring that the proprietors of shares should be entitled to two new quarter shares in respect of each whole share. By his will, the testator had bequeathed 30 shares to *A.* and 30 shares to *B.*, declaring that the legacies should not be deemed specific so as to be capable of ademption : *Held*, first, that the legatees were entitled to the income of the shares from the death of the testator; secondly, that the legatees were entitled to a proportionate number of new quarters; thirdly, that the legatees were not entitled to have the deposits and calls on the new quarter shares, or the calls due on the 82 whole shares, or (*semble*), the calls due on the 38 original shares paid out of the testator's original estate; fourthly, that the legatees, and not the executor, had the right of electing out of which class of shares their legacies should be delivered to them. *Jacques v. Chambers*, 2 Coll. 435.

9. Testator bequeathed to *G.* two sums of stock, and in case of his death in the testator's lifetime without issue, the two sums were to be

equally divided amongst the testator's nieces thereafter named, under the same conditions and restrictions as were thereafter mentioned respecting the several bequests thereafter mentioned to them respectively given. The testator then gave 12,000*l.* stock to trustees, upon trust to pay the dividends (in thirds) to the testator's three nieces, *A.*, *B.*, and *C.*, for their lives, and, after their respective deaths, to transfer the capital (in thirds) to the children of the nieces, with limitations over, in the nature of cross-remainders, in the event of any of the nieces dying without leaving children; with an ultimate limitation, in the event of all the nieces dying without leaving children, in favour of the residuary legatee, a stranger. *G.* died without issue in the testator's lifetime. The nieces had children. *Held*, that the children took the same interests in the stock given to *G.* as they did in the 12,000*l.* consols. *Ross v. Ross*, 2 Coll. 269.

And see *Trustee*, 2; *Residue*, 2, 3.

LEGACY DUTY.

Testator, by his will, directed that the legacies therein given should be paid free of legacy duty. By a codicil, which he directed might be considered and taken as a part of his will, he gave other legacies. *Held*, that the legacies given by the codicil were not given free of legacy duty. *Early v. Benbow*, 2 Coll. 354.

LAPSED LEGACIES.

General residue.—Upon the construction of a will, *held*, that lapsed legacies fell into the general, and not into a particular residue. *Master v. Laprimaudaye*, 2 Coll. 443.

MAINTENANCE.

Testator directed his residue to be converted into money, and his wife to receive the interest of it for the maintenance of herself and children; and, at her death, he bequeathed the whole, share and share alike, to all the children she might have by him. The testator left a son and a daughter. Some years after his death, the daughter married. *Held*, that, thereupon, her right to maintenance ceased. *Bowden v. Laing*, 14 Sim. 113.

MARRIED WOMAN.

1. Property was held, in trust to pay the dividends to such person as a married woman should, but not by way of anticipation, appoint, and in default of appointment, to her for her separate use, and it was declared that the receipts of her or her appointee should be good discharges. *Held*, that she could not, by anticipation, charge the dividends not accrued due. *Harnett v. Macdougall*, 8 Beav. 187.

2. *Separate property*.—*Restraint on alienation*.—Testator directed his trustees, during the life of his daughter, (who was married,) to pay the interest of a share of his property to such person or persons as she should from time to time during her life, whether covert or sole, under her hand, authorize and appoint to receive the same, and in default of appointment,

into her proper hands, for her sole and separate use, independently of her then or any future husband, and so as to be free from his debts, &c.; and that the receipt or receipts of her, or of the person or persons whom she might authorize to receive the same annual proceeds, or any part thereof, should be alone an effectual discharge to his trustees for the payment thereof; and that his trustees should always be at liberty to require from her a separate authority or receipt, from time to time, for each quarterly payment; it being his intention that the annual proceeds should not be sold, charged or otherwise disposed of. *Held*, that the restraining clause did not apply to the power of appointment given to the daughter, and therefore, that an appointment of the interest of the share, made by her, for her life, was good. *Medley v. Horton*, 14 Sim. 222.

Case cited in the judgment: *Acton v. White*, 1 Sim. & Stu. 429.

3. Gift by will of leasehold and other personal estates to trustees, in trust to pay the rents, &c., to such person or persons as a married woman should, by writing under her hand from time to time, but not by way of anticipation, appoint, and in default of such appointment, or so far as the same should not extend, into her proper hands for her sole and separate use, with a direction that her receipts, notwithstanding coverture, should be good discharges, and after her death in trust for her children. *Held*, upon the particular terms of the gift, that the restraint on anticipation applied to an assignment by the married woman of her separate estate, as well as to an appointment in execution of her power, notwithstanding the will did not provide that her receipts alone should be good discharges. *Brown v. Bamford*, 1 Phill. 620.

Case cited in the judgment: *Barton v. Briscoe*, Jac. 603.

4. Bequest of 1,000*l.* stock to a married woman, "solely and entirely for her own use and benefit during her life," is a bequest for her life, to her separate use. *Inglefield v. Coghlán*, 2 Coll. 247.

Appointment.—Writing.—By a deed, made since the Statute of Wills, (7 W. 4, and 1 Vict. c. 26,) certain trust funds were appointed to trustees, in trust for such person or persons, for such interest or interests, and chargeable with such sum or sums of money, and for such intents and purposes, and in such manner, in all respects, as the appointor should, by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by her sealed and delivered in the presence of and attested by one witness or more, direct or appoint. The appointor afterwards made her will, (which was duly executed and attested according to the Statute of Wills,) and thereby bequeathed part of the trust funds: *Held*, that the will was a writing within the terms of the power. *Buckell v. Blenkhorn*, 5 Hare, 181.

And see *Trustee*, 1.

REMAINDER MAN.

See *Tenant for Life*.

RAILWAY SHARES.

See *Legacy*, 8.

REMOTENESS.

Vesting.—Testator gave his real and residuary personal estate, in trust to pay an annuity to his nephew, and, subject thereto, in trust for his daughter for life, remainder in trust to pay the income for the maintenance of all and every such child or children as she might leave at her decease, during his, her, or their minority; and when the youngest should have attained 25, to pay, assign, and transfer the income, together with the principal, to the children, the same to be divided equally between them, share and share alike; but if any of them should die leaving a child or children who should attain twenty-one, then to pay and assign the share of such child to his or their child or children: and the testator then expressed his further will to be, that his trustees should, immediately after his nephew's decease, convey, release, and assign all his freehold and leasehold estates unto the heir or heirs who should be legally entitled thereto, and in case his daughter should leave no child or children, or they should die under age and unmarried, then in trust to pay and assign the income, together with the whole residue, unto and equally between his next of kin. The daughter left five children living at her death, all of whom attained the age of 25: *Held*, that the trust for them was not void for remoteness, but that they took vested interests in the trust-property on their mother's death. *Milroy v. Milroy*, 14 Sim. 48.

RESIDUE.

1. Testator gave 19,000*l.* consols to trustees, in trust for *E. B.* for life, and, after her death, for her children; and in case she should die without leaving a child, he directed that the trust fund should be considered as part of his personal estate, and be disposed of in a due course of administration; and he gave the residue of his effects to *E. B.*, her executors and administrators, to and for her and their own use and benefit, she and they paying thereout all the debts due from him at his decease, together with the expenses of his funeral, the charges of proving and establishing his will, and other incidental expenses, and he appointed her his executrix. *E. B.* survived the testator, and died without leaving a child. *Held*, that, thereupon, the trust fund did not become disposed of, but formed part of the testator's residuary estate, and belonged, as such, to *E. B.*'s estate. *Scott v. Moore*, 14 Sim. 35.

See *Elmsley v. Young*, 2 M. & K. 780.

2. *Legatees for life.*—Testator directed that a certain debt of 25,000*l.* should be deemed part of the residue of his personal estate; and he gave it and all interest due and to grow due thereon, and the residue of his personal estate, to trustees, upon trust to collect, and from time to time invest same, and to pay the in-

terest of one-third part thereof to each of his 3 children for their lives, and after their decease respectively, to pay one third part of the principal to their children. After making his will, the testator by deed released to his debtor all interest which should become due on the 25,000*l.* during his life; and he agreed to postpone the payment of the principal sum and the interest to accrue due thereon, until the end of three years next after his decease; and then to accept payment of the principal sum and the interest which should have accrued due thereon during the three years, by instalments; and that the 25,000*l.* should not bear interest after the expiration of the three years, so long as the instalments were regularly paid; but that if default should be made in payment of the instalments, the balance should be payable, with interest, until the instalments, with the interest, should be paid. By a codicil the testator declared that the execution of this deed should not revoke, prejudice, or affect his will. *Held*, that the three years' interest did not form part of the capital of the residuary personal estate; and that the legatees for life of the residue were entitled to it. *Caulfield v. Maguire*, 2 J. & L. 141.

3. *Legatees*.—A direction to sell particular parts of the testator's personal estate is not of much weight on the question of the conversion of the residue; for the rule as to conversion does not proceed on the presumed existence of a definite intention that the property shall be converted, but upon the expressed intention that the legatees shall enjoy the property in succession.—*Cufe v. Bent*, 5 Hare, 34.

Cases cited in the judgment : *Pickering v. Pickering*, 4 Myl. & Cr. 289; *Goodenough v. Tremainendo*, 2 Beav. 512.

See *Tenant for Life*, 1.

REVOCATION.

1. Testator bequeathed a year's wages and 150*l.* to his servant, *J. F.* By a codicil he revoked those bequests, and gave *J. F.* an annuity in lieu of them. By a subsequent codicil he revoked every gift in his will, bequeathed *J. F.*, his late butler, both the one year's wages and the pecuniary legacy of 150*l.*: *Held* that the annuity given by the prior codicil was not revoked. *Pratt v. Pratt*, 14 Sim. 129.

2. A remainder man in fee joined with his mother, the tenant for life, in a mortgage in fee, by which it was provided that if the remainder man, his heirs, executors, &c., should repay the sum borrowed on a certain day, the mortgagee, his heirs or assigns, should reconvey the estates to the person or persons for the time being entitled to the reversion and inheritance of the estates, and his, her, or their heirs or assigns, or unto such other person or persons, and in such other manner and form, as he, she or they should direct or appoint: *Held*, that a devise of the estates previously made by the remainder-man, was not revoked by the mortgage. *Youde v. Jones*, 14 Sim. 162.

3. *Erasure in pencil*.—Where a will was written in ink, and formally executed, and the

testator afterwards drew a line in pencil through a clause in the will: *Held*, that the erasure in pencil raised no presumption of revocation, and that, without other explanation, it was properly regarded not as a revocation of the clause, but as merely deliberative, or indicative of some future and incomplete purpose. *Francis v. Grover*, 5 Hare, 39.

Cases cited in the judgment : *Parkin v. Bainbridge*, 3 Phillimore, 321; *Ravenscroft v. Hunter*, 2 Hagg. 68; *Lavender v. Adams*, 1 Add. 403; *Edward v. Astly*, 1 Hagg. 409; *Hawkes v. Hawkes*, ib. 321.

4. *Second codicil*.—Testator, by will, distributed 7,300*l.* stock amongst several legatees, except 200*l.*, surplus of the stock, which he directed to be applied in defraying any necessary expenses. By a codicil, dated two years after the will, at which time there was, by reason of certain erasures made in his will, a much larger surplus than 200*l.* stock, he left "the surplus of his money in the funds" to be appropriated as his executors might think proper among the several legatees. By a certain subsequent codicil, dated a few days after the former, the testator, after bequeathing certain snuff-boxes, &c., and stating that there appeared "a surplus remaining after the legacies aforesaid were paid," begged his executor to distribute the same among the children of his son *W.* There was property of inconsiderable amount besides stock, to which the residuary bequest, contained in the last codicil, might be applied: *Held*, that that bequest did not operate as a revocation of the bequest of the surplus of the funds contained in the second codicil. *Inglefield v. Coghlan*, 2 Coll. 247.

SPECIE.

Residue.—*Widow*.—Upon the construction of a will, *held*, that the testator's widow was not entitled to enjoy the testator's residuary property for her life *in specie*. *Johnson v. Johnson*, 2 Coll. 441.

SPECIFIC LEGACY.

See *Legacy*, 1, 2.

SURVIVORSHIP.

Testatrix, before the stat. 1 Vict. c. 26, bequeathed the residue of her personal estate to her son *A.* and her daughter *B.*, to be divided equally between them, in case they were both living at the time of her decease; but if either of them should happen to die before her, or at any time after, without issue, then she bequeathed the share of him or her so dying and without issue, to the survivor of them. *A.* and *B.* survived the testatrix. *A.* died unmarried in the lifetime of *B.* *Held*, that the moiety of the residue given to *A.* devolved in *B.* *Turner v. Frampton*, 2 Coll. 331.

Cases cited in the judgment : *Pinbury v. Elkin*, *Hughes v. Sayer*, *Kelly v. Fowler*, 3 Bro. C. P. (Tonl. ed.) 299; *Massey v. Hudson*, 2 Mer. 130, 133.

TENANT FOR LIFE.

1. *Residue*.—*Interest*.—Testator bequeathed

his residuary personal estate to trustees, in trust, *with all convenient speed* after his death, to sell such part or parts as they, or the survivor of them, or the executors or administrators of such survivor, or their or his assigns, should think proper, of any monies in the funds, and also to call in, sell, and convert into money all such parts of the rest of his general personal estate as should not consist of money, and out of his general personal estate, and the monies forming part thereof, and to arise thereby, to pay his debts, &c.; and to invest the residue of the monies to arise from his general personal estate which should remain after answering the purposes aforesaid, in the usual securities, and, from time to time, to alter, at their or his discretion, as well the same stocks, funds, and securities, as also such of the stocks, funds, or securities, being part of his personal estate, which they or he should not think proper to sell and convert into money; and to stand possessed of all the trust-monies, stocks, funds, and securities, which should be so purchased as aforesaid, and which should remain unconverted into money as aforesaid, in trust, to pay the interest, dividends, and annual produce thereof, as and when the same should be received, to the plaintiff.

The residue of the testator's estate, after payment of his debts, &c. &c., consisted, in part, of sums of long annuities, and Bank and East India stock, which still remained unsold.

Held, that the plaintiff was entitled to the income accrued on those sums, from the testator's death. *Wrey v. Smith*, 14 Sim. 202.

2. *Remainder-man.*—*Capital and income.*—Testatrix bequeathed her personal estate to *A.* for life, remainder over. The estate consisted in part of a sum recovered in respect of principal and interest due from a deceased debtor to the testatrix; but, as the debtor died partially insolvent, the sum recovered was less than the principal of the debt.

Held, that *A.* was not entitled to a portion of that sum in respect of the interest accrued since the testator's death, but that the whole of it was part of the capital of the testatrix's estate. *Turner v. Newport*, 14 Sim. 32.

THELLUSSON'S ACT.

See *Accumulation*.

TRUSTEE.

1. *Power to appoint trustee.*—Testator, after appointing three trustees of his will, provided that, if they, or any of them, or any trustee or trustees to be appointed under that proviso, *should die* or be desirous to be discharged, or go to reside beyond sea, or neglect, or refuse, or become incapable to act, before the trusts should be performed, it should be lawful for the surviving, continuing, or acting trustees or trustee for the time being, or the last acting trustee, to nominate a new trustee or trustees; and that the trust property which should be or have been vested in the trustee or trustees so dying, desiring to be discharged, &c., and

should then be subject to the trusts of the will, should be vested in the new trustee or trustees jointly with the surviving or continuing trustee or trustees, or solely, as the case might require. Two of the trustees died in the lifetime of the testator. *Query*, whether the new trustees could be appointed under the power. *Walsh v. Gladstone*, 14 Sim. 2.

Legacy.—Testator gave 300*l.* to each of his three trustees and executors who should prove and act: but if any of them *should die* without *having acted*, or should decline or refuse to act, the legacies intended for them were to go to the trustees, who, *under the power for that purpose contained in the will, should be appointed in their place*. Two of the trustees died during the testator's lifetime, and two new ones were proposed by the surviving trustee, and appointed by the Master in compliance with the decree in a suit for administering the testator's estate: *Held*, that they were not entitled to the legacies intended for the deceased trustees. *Walsh v. Gladstone*, 14 Sim. 2.

UNCERTAINTY.

Devise.—Testator devised all his real estates, (except the hereditaments thereafter particularly devised,) to trustees on certain trusts. In a subsequent part of his will, he devised his farm in *A.*, in the possession of *T. II.* to *T. R.* He had two farms in *A.*, both of which were in the possession of *T. II.*, but at different rents, and known by different names. There being no evidence to show with certainty which of the two farms the testator meant to devise to *T. R.*, the court held the exemption to be inoperative, and that both farms passed by the general devise to the trustees. *Blundell v. Gladstone*, 14 Sim. 83.

VESTING.

See *Remoteness*; *Legacy*, 6.

WIDOW.

See *Election*; *Specie*.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Rigby v. Strangways. Dec. 1st, 1846.

ENTERING APPEARANCE.—NEW ORDERS.

A defendant having filed a bill for the same purpose as the plaintiff's, and declaring to abandon it, was refused leave to enter an appearance under the 16th Order of May, 1845, art. 5, after the expiration of the 12 days thereby allowed.

THE plaintiff filed his bill on the 12th Nov., 1845, and served the defendant with a copy on the 5th August, 1846. The common appearance was entered by the latter on the 2nd Nov., 1846, and on the 9th he was served with notice of motion to discharge such appearance on the

grounds of irregularity, the 16th of the new orders, art. 5, requiring it to be entered within 12 days after service of a copy of the bill. Replication was filed on the 11th of the same month. The *Vice-Chancellor of England* had refused, with costs, the defendant's application for leave to enter an appearance. The defendant filed a bill for the same purpose as the plaintiff's, on the 10th July, 1846, being three weeks before he was served with a copy of the latter.

Mr. *Stuart* and Mr. *Elderton* now renewed the application, which was opposed by Mr. *Roll* and Mr. *Lloyd*.

The *Lord Chancellor*, having previously suggested certain terms to the defendant respecting the withdrawal of his bill, to which he did not accede, remarked that it was always gratifying to the court to be enabled to save expense to the suitors, although unfortunately it had not always such discretionary power confided to it as that conferred by the new orders in the present instance. It was evident that one of these two bills was useless if both were filed for the same object. Under the circumstances, the order of the *Vice-Chancellor* appeared to be perfectly right.

Motion refused, with costs.

Rolls Court.

Hodson v. Harris. Nov. 21st, 1846.

PERSONAL REPRESENTATIVE.—OFFICIAL ASSIGNEE.

An order to pay a sum to a person or his personal representative will justify a payment to his official assignee.

In this case an order had been made for payment of a sum of money to a creditor or his personal representative. The Master had found the sum in question was due to a Mr. *Young*, as the official assignee of the creditor; but the Accountant-General made a difficulty as to paying it, on the ground that the official assignee was not the personal representative of the creditor.

Mr. *Spence* now applied for an order that the money should be paid to the assignee.

Lord *Langdale* said that there appeared to him no doubt but that the Accountant-General might safely pay the money to the official assignee under the order as worded; but if he continued to have a difficulty about it, he would make an order authorizing the payment.

Vice-Chancellor of England.

Ex parte Leigh. Nov. 21, 1846.

INFANT.—CONSTRUCTION OF ACT 11 GEO. 4 AND 1 WILL. 4, C. 65.

The court has not the power under the above act to direct a lease to be made of the property of an infant, unless such property is absolutely vested in the infant in fee or in tail.

By a settlement dated in October, 1839, made on the marriage of Edward Leigh and

Mary his wife, certain hereditaments, including a mansion house and grounds, were limited to Edward Leigh and Mary his wife for their lives, with remainder to the sons of the marriage in tail male, and in case there should be no sons, then to the daughters as tenants in common in tail. The wife died, leaving five daughters but no sons; and a petition was presented on behalf of the infants, under the 11 Geo. 4, and 1 Will. 4, c. 65, praying for a reference to the Master to inquire whether it would be for their benefit that a building lease of a portion of the property should be granted. By the 17th section of the act it is declared, that where any person being an infant shall be seised or possessed of or entitled to any land in fee or in tail, and it shall appear to the court to be for the benefit of such infant that a building lease shall be granted of such estate, it shall be lawful for such infant or his guardian, by the direction of the court on petition, to make such lease, provided that no lease be made of such mansion house, or grounds held therewith, for any period exceeding the minority of the infant.

Mr. *Barber*, for the petition.

The *Vice-Chancellor* said, he was of opinion the court had not the power to make such an order, unless the infant had an indefeasible estate in possession in fee or in tail. A similar question had arisen in *ex parte Evans*, 2 Myl. & K. 318, and it had been there decided that the act did not apply. Having regard also to the latter part of the 17th section of the act, and the circumstances of his case, he considered the court could not exercise the power, and the petition must be refused.

Vice-Chancellor Knight Bruce.

Morris v. Morris; Same v. Same. Michaelmas Term, 1846.

LACHES.—PUBLICATION.—BILL TO PERPETUATE.—INFANT.

An infant defendant answered, by guardian to a bill filed in 1823, to perpetuate testimony. In 1836 he attained full age. In 1846 he moved for liberty to answer or demur, and excused the delay of ten years by stating circumstances showing great destitution. The court refused the motion, with costs. A suit had been instituted in Ireland, to which the defendant was a party. Motion being made in the above-named English suit, to pass publication, the motion was directed to stand over until publication had passed in Ireland.

THESE were two motions, the first of which was made on behalf of the plaintiff, that the depositions in the cause might be forthwith published, or that publication might pass upon the production to the officer of an affidavit showing that the publication of depositions in a suit in Ireland had passed. In the Irish suit, J. W. *Morris*, jun., the only surviving defendant in the present cause, was plaintiff. The second motion was made on behalf of the said

J. W. Morris, that he might be at liberty to demur or answer to the bill in this court, or take such other proceedings as might be advised. The facts appeared to be these:—In 1823, the bill was filed for the purpose of perpetuating testimony, the object being to annul a marriage between the parents of J. W. Morris, jun. An answer was put in by him, by his guardian. In 1836 he attained his majority. The Irish suit had been instituted in 1816, with an object similar to that of the English suit. In 1846, the Master of the Rolls of Ireland refused a motion by the plaintiff there, for passing publication, but without prejudice to a renewal of the motion, when publication should have passed in a third suit, in which J. W. Morris, jun., was plaintiff. By his affidavit it appeared, that the family suits had gone on since 1816 and 1823, his mother dying, and his father obtaining his discharge under the Insolvent Debtors' Act, and he, the defendant, J. W. Morris, being in such destitute circumstances as to be unable to procure professional assistance; and that the property and the parties were in Ireland, he alone being resident in England.

Mr. Rogers for the motion on behalf of J. W. Morris, jun.

Mr. E. F. Smith, for the plaintiffs, consented that the motion to pass publication should stand over until after publication in the Irish suit. As to the second motion, he submitted, that there had been laches, which precluded the court from lending its assistance. He cited *Lord Dursley v. Berkeley*, 6 Ves. 252; *Bayley v. Edwards*, 3 Swanst. 703; *Salt v. Donegal*, 1 Lloyd & C. 82; *Kelsall v. Kelsall*, 2 My. & K. 409; *Price v. Carver*, 3 My. & Cr. 157; *Bent v. Young*, 9 Sim. 180; *Tullock v. Hartley*, 1 You. & Col. C. C. 114.

Vice-Chancellor Bruce said, that without deciding whether he would have made an order upon the motion of the defendant, had he come earlier, or had a substantial excuse or explanation been given for the delay, he must refuse the motion, with costs. As to the second notice of motion, that the depositions might be published, he was of opinion, having regard to what had been done by the Master of the Rolls in Ireland, that the motion must stand over, with liberty to apply. He recommended that the court in Ireland should be informed of the state of the proceedings here. His present impression was, that so soon as publication had passed in the Irish suit, publication should also pass here. But he did not at present decide this.

Queen's Bench.

(Before the Four Judges.)

Pearce v. Chaplin. Michaelmas Term, 1846.

PRACTICE.—JUDGE'S ORDER.—HOW FAR A PARTY CONCLUDED BY HIS OWN CONDUCT.

A judge's order to set aside a judgment and execution for irregularity was made, imposing as terms on the defendant, that he should not bring an action: and at the time

such order was made, the attorney for the defendant protested against the power of the judge to impose such terms, but he accepted the order and served it.

Held, that the defendant, having accepted and served the order, was precluded from afterwards objecting that the judge had no power to impose terms on the defendant that he should not bring an action.

In this action judgment was signed for want of a plea, and execution issued. On the 27th of July a summons was taken out by the defendant calling on the plaintiff to show cause why the judgment and all subsequent proceedings should not be set aside for irregularity, with costs. The case was heard before the Chief Baron at chambers, who ordered that the judgment and execution should be set aside, without costs, and that no action should be brought. The attorney who appeared for the defendant objected at the time the order was made, that the learned judge had no power or authority to impose these terms on the defendant, directing that no action should be brought. The order was served on the plaintiff, and the defendant acted on it. A rule nisi was obtained to set aside the judge's order.

Mr. H. Hill now showed cause. One objection to this order is, that the learned judge in setting aside the judgment and execution for irregularity had no authority to order that the defendant should bring no action. But the defendant has by his own conduct precluded himself from taking the objection. He accepts the order, and serves it, and therefore, cannot now dispute the power of the judge to make it. In *Giraud v. Austen*,^a it was held, that where a party has obtained a judge's order to set aside a judgment upon payment of costs, he cannot, if he has drawn up and served the order subsequently, procure the rescission of so much of it as relates to costs. (Stopped by the Court.)

Mr. Petersdorff, contra. In that case the judge had power to make the order as to the costs, but the distinction is, that in the present case the judge had no power to make that part of the order which imposed terms on the defendant that he should not bring any action. Now the cases of *Cash v. Wells*,^b *Abbott v. Greenwood*,^c *Adlam v. Noble*,^d establish the proposition, that where a judgment and execution are set aside for irregularity, the court has no power to impose the terms on the defendant that he shall bring no action. Judgment had been signed against the defendant, and his property was actually taken in execution, and therefore he was compelled to accept the order made by the learned judge, and the attorney who appeared for the defendant protested against the latter part of the order, which protest is not abandoned by the act of drawing up the rule where it relates to a portion of the order which there was no jurisdiction to make.

Lord Denman, C. J. Assuming that these

^a 1 Dowl. N. S. 703. ^b 1 Barn. & Adol. 375.

^c 7 Dowl. P. C. 534. ^d 9 Dowl. P. C. 322.

proceedings are irregular, then the facts are, that an application was made to a judge at chambers to set aside a judgment and execution for irregularity, with costs, but the learned judge made the order, without costs, imposing the terms that the defendant should bring no action. Then it said that the attorney for the defendant appeared and protested against the terms imposed by the learned judge, but notwithstanding such protest he accepts the order, serves it, and takes all the benefit to be derived from it. The defendant, therefore makes himself a party to the rule, and thereby precludes himself from the right of bringing an action. There are cases where it is said that a judge has no power to impose these terms, but there is no case which goes the length of deciding that where a party has accepted and acted on a judge's order, he can afterwards refuse to comply with the terms imposed by it.

The other judges concurred.

Rule discharged, without costs.

In re ———. Michaelmas Term, 1846.

PRACTICE.—ATTORNEY.

The court will entertain an application to strike an attorney off the roll for alleged professional misconduct, although the facts adduced in support of the charge disclose evidence sufficient to sustain an indictment.

THIS was an application calling upon an attorney to show cause why he should not be struck off the roll for alleged professional misconduct.

Mr. *Whitehurst* and Mr. *Flood* now showed cause. The affidavits, on which this motion was made, state facts which amount to an indictable offence, and the practice of this court is not to entertain an application of this sort till the criminal charge has been disposed of. In one case^b in this court *Lord Denman*, C. J., so lays down the rule. He says, "The facts stated amount to an indictable offence. Is not it more satisfactory that the case should go to a trial? I have known applications of this sort after conviction, upon charges involving professional misconduct; but we should be cautious of putting parties in a situation where, by answering, they might furnish a case against themselves, on an indictment to be afterwards preferred. On an application calling on an attorney to answer the matters of an affidavit, it is not usual to grant the rule if an indictable offence is charged." A different rule was certainly laid down by *Lord Abinger*, C. B., in *Stephens v. Hill*,^c that the fact of an attorney being charged with misconduct will not prevent the court granting a rule calling upon him to show cause why he should not be struck off the roll, but that the court would not, under such circumstances, call upon him to answer

the matters in an affidavit. [*Lord Denman*, C. J. I always thought that the rule laid down by *Lord Abinger* was correct, and that an attorney ought always to be amenable to these motions.] A distinction is there drawn between misconduct of an attorney in the course of any cause, and misconduct not connected with the practice of his profession of an attorney, and in the latter case, *Lord Abinger*, C. B., says, that the court will not strike him off the roll until after conviction by a jury.

Mr. *Robinson*, for the Incorporated Law Society, was not heard on this point.

Lord Denman, C. J. We do not agree with the counsel for the person against whom this application is made, that the first objection is to have any effect. The object of such applications is not merely to punish the particular person applied against, but to prevent a dishonest man acting in this court and appearing to act with the authority of the court. We stated that in the case of *Ex parte King*,^d and that is in fact the very intention of this summary jurisdiction.

Numerous affidavits were filed in answer to the charge, and the case was referred to one of the Masters to make his report to the court on the subject, with liberty to call for further affidavits.

Queen's Bench Practice Court.

Stones v. Biron. Michaelmas Term, 1846.

SHERIFF'S COURT. — PRACTICE IN. — ATTORNEY.

Where an attorney conducts a civil cause at a trial before the under-sheriff, as advocate, and makes a speech to the jury on behalf of his client, he cannot give evidence in the cause, and if he does, the court will grant a new trial.

DEBT, by the indorsee against the indorser : Plea, no notice of dishonour. This case was tried before the under-sheriff, when the plaintiff obtained a verdict. In the early part of the term, *Udall* obtained a rule nisi for a new trial on two grounds:—1st, that the notice of dishonour relied on at the trial was an insufficient notice; and 2ndly, that the attorney who conducted the plaintiff's case before the under-sheriff had been guilty of improper conduct at the trial. The alleged impropriety was, that the attorney had acted in the cause in the double capacity of advocate and witness, for when the case for the defendant had been closed, the plaintiff's attorney addressed the jury, and commented on the evidence given by the defendant's witnesses, (who had attempted to set up some agreement between the plaintiff and defendant,) and then stated, that he should himself give evidence to contradict the defendant's witnesses, which he accordingly did, and the plaintiff had a verdict.

^a As the complaint against this attorney is still under consideration the name is omitted.—Ed.

^b 3 Barn. & Adol. 1088.
10 Mees. & Wel. 28.

^d See 31 L. O. 90. That case also was mooted at the instance of the Incorporated Law Society.

Petersdorff now showed cause. (The first branch of his argument related to the notice, but as no judgment was given on that point, the argument is omitted.) There was nothing in the attorney's conduct in this case which can at all be called improper; if there was any fault at all it is in the constitution of the court, which compels attorneys to appear as advocates there—no fee being allowed on taxation of costs for the attendance of counsel at the trial of causes before the under-sheriff; the attorney is compelled to conduct his client's case there, and is it to be said, that if he does this, he is to be prevented from proving any fact in favour of his client which he is enabled to prove, and which, perhaps, may lie exclusively within his own knowledge? it is submitted, that this court will not for the first time now lay down such a principle.

Udall, in support of the rule, contended, that nothing could be more improper and indecent than the conduct of the plaintiff's attorney in this case. He cross-examined the witnesses called by the defendant—made a speech to the jury, commenting on the evidence they gave, and then stated that he should himself give evidence to contradict them. He was then sworn, and gave evidence accordingly. How, were the jury to separate his speech, which consisted of comment on the evidence given for the defence, from the statements made by him on oath? This is a position this court will not allow them to be placed in. Now in criminal cases, it is clear, that a prosecutor cannot address the jury and also give evidence of facts: this is distinctly laid down in *Rex v. Brice*, 2 B. & Al. 606, and if this be the rule in criminal cases, *à fortiori* the rule will apply in the case of a civil action. (He then proceeded to argue as to the insufficiency of the notice of dishonour, but was stopped by the court.)

Patteson, J. I do not think it necessary in this case to consider whether the notice of dishonour relied on by the plaintiff was sufficient or not. I would rather decide the case on the broad and general ground, that it was highly improper for the attorney to act in the double capacity of advocate and witness. I think that where a party makes a speech to the jury, cross-examines the witnesses called on the other side, makes a speech in reply, and then considers himself as a witness, he ought not to be heard; in this case the plaintiff's attorney did the acts I here named in his character as advocate, and then was heard as a witness, and therefore, on that ground, I think that the rule for a new trial should be absolute.

Rule absolute.

Common Pleas

Giles v. Tooth, and *Giles v. ten other defendants* in as many separate actions. Michaelmas Term, 1846.

PROVISIONAL COMMITTEES.—SEVERAL ACTIONS.—STAYING PROCEEDINGS.

Where the same plaintiff brings separate actions against several members of a railway

provisional committee, the court will not stay the proceedings in each of such actions, except the one with which the plaintiff should elect to proceed.

A RULE had been obtained in the early part of this term, calling upon the plaintiff to show cause why the proceedings in each of the above eleven actions should not be stayed until this court should otherwise order, except in such one of the said actions as the said plaintiff should elect to proceed with, and for a stay of proceedings in the meantime. The sum sought to be recovered was £1,560, for the services performed by the plaintiff for the Tonbridge and Rye Harbour Railway Company, of which the defendants were with others the provisional committee; and the affidavits in support of the motion for the rule *nisi* showed that the debt, if due at all, was due from the defendants jointly, and that each defendant separately denied his individual liability.

Channell, Sergeant, and *Pigott*, now showed cause. No terms are offered in this case by the plaintiff, and there is nothing in the affidavits to show oppression, or that the proceedings are vexatious; there is, therefore, no pretence for asking that the actions should be stayed, and the present case is very different from those of *Doyle v. Anderson*, 1 Ad. & El. 635; *Kerr v. Lee*, 9 Dow. & Ry. 125; *Bartlett v. Bartlett*, 4 Scott, N. R. 779; *Anderson v. Twogood*, 1 Q. B. 245; *Carne v. Leigh*, 6 B. & C. 124; and other cases of consolidation rules, where some advantage is always given to the plaintiff. The defendants may plead in abatement, or in case of judgment against one, the others may plead that judgment in the other actions, or after execution, proceed by *audita querelâ*. *King v. Hoare*, 13 M. & W. 494; Bac. Abr. *audita querelâ*, B. The defendants here may be liable to different portions of the claim, and thus, if compelled to elect, would be placed in a difficult position. The case of *Pechell v. Langton*, 2 T. R. 512, was also referred to.

Bramwell, contra. The court clearly had jurisdiction to make this rule absolute. *Pechell v. Langton*, 2 T. R. 512; *Humphreys v. Knight*, 6 Bing. 572; *Sadler v. Cleaver*, 7 Bing. 767; *Everett v. Yowells*, 3 B. & Ad. 349; *Miles v. The Inhabitants of Bristol*, 3 B. & Ad. 945; *Jeffries v. Sheppard*, 3 B. & A. 696. *Tidd* Pr. 528. The effect of the statute 3 & 4 W. 4, c. 42, s. 8, is to restrain the common law right of a plea in abatement, and in actions like the present, it is now very difficult to plead in that way. As, however, the defendants have the right so to plead, the court, it is submitted, should by virtue of their equitable jurisdiction, grant the summary relief now asked.

Wilde, C. J., after stating that the rules in similar cases then pending in the Queen's Bench could not, when decided, affect the present application, proceeded: This is an application, calling upon the court to stay the proceedings in all the eleven actions but the one which the plaintiff should elect, and the ground is, that the defendants are under particular

hardship, and also that they had a circuitous remedy, by which to obtain substantially the same relief. Now that the defendant is under a hardship, furnishes no ground why the court should take from the plaintiff that legal right which he possesses, unless it can give him substantially the same remedy. Then, had the defendants in the first place made out that they possessed a circuitous mode of obtaining the same relief? It is said that they cannot practically plead in abatement, and if so, that remedy is gone, owing to the nature of the partnership into which they have entered, and that the plaintiff could not sue jointly any given number of the defendants with safety. The plaintiff has a right to sue one of the several joint contractors, unless the defendants can show how he can safely sue all jointly, which here they cannot do. Why, then, are we to give that remedy which they cannot obtain by plea in abatement contrary to the provisions of the late Act of Parliament. The whole hardship arose out of the nature of the association into which the defendants had entered. That was their own act, and it is no ground for the court's casting any inconvenience on the plaintiff. Then do the defendants show any abuse of the process of the court, any improper motives in the proceedings on the part of the plaintiff; on the contrary, all the circumstances of the case show that if the plaintiff wished to make the parties liable, he had no other mode of proceeding, and is doing nothing more, therefore, than exercising his legal right. What ground, then, remains for interfering? It was no duty of a judge to alter the law, and it was besides very difficult in this case to see that any rule could be made which would give the defendants the relief substantially which they ask, and would not at the same time operate prejudicially on the plaintiff. Resort must be had to the legislature to make rules to relieve in new cases, for the court have no such power. Although desirous to find some mode of relieving the defendants, I have not been able to see the way clearly, and am therefore of opinion that there is no course left but to discharge the rule.

Coltman, J. Cases had been cited to show that where there is a clear but circuitous mode of proceeding to obtain relief, the court will interfere summarily. In the present instance, however, it does not appear that the defendants had such a clear, definite, legal course. If a case of oppression had been made out, it might have afforded a ground for the court's interference; but it does not appear to me that any such ground has been made out, and we all know from experience, of which we have had much, in cases like the present, that the liability of provisional committee men depends on various circumstances, and there would, therefore, be great hardship on the plaintiff if he were compelled to sue jointly.

Mantle, J. I am of the same opinion. Unless the defendants were prepared to say that they all and no more were liable, it would not be the same thing for the plaintiff to sue them

jointly, and the plaintiff therefore appears to me to be doing nothing more than is just, legal, and right, in order to enforce his demand, the right of the defendants to plead in abatement being left quite undisturbed. The court, then, is asked to give relief by staying the proceedings in all but one action, and that unconditionally; but that I think cannot be granted, as the plaintiff clearly had a right to do what he is doing, and further could not do what is requisite to the just enforcement of his rights without adopting the course he had adopted. The cases cited on behalf of the defendants have a very remote bearing on this case, and only show that where there is an equitable right, the court will exercise their equitable jurisdiction concurrently with their legal.

Williams, J., concurred.

Rule discharged with costs.

Exchequer.

Smith v. Wedderburne. Michaelmas Term, Nov. 17, 1846.

FORM OF ENTERING APPEARANCE FOR DEFENDANT.

A plaintiff who sues in person may, upon the defendant's default, enter an appearance in person for him, although no such form is given in the schedule of the Uniformity of Process Act, 2 W. 4, c. 39.

In this case the plaintiff had entered an appearance for the defendant, in the following form:—

“In the Exchequer of Pleas,
John Elias Smith, plaintiff,

against

Charles Webster Wedderburn, defendant,
John Ellis Smith, the plaintiff appears for the defendant.” Sec. Stat.

Hurlstone moved for a rule to show cause why the above appearance should not be set aside, and why the defendant should not be at liberty to enter an appearance. The Uniformity of Process Act, 2 Will. 4, c. 39, s. 2, enacts, “that the mode of appearance to every such writ, or under the authority of this act, shall be by delivering a memorandum in writing, according to the form contained in the said schedule, and marked No. 2, such memorandum to be delivered to such officer or person as the court out of which the process issued shall direct,” &c. The schedule gives three forms of entering an appearance, one where the defendant appears in person, another where the attorney of the defendant appears for him, and a third, where the attorney of the plaintiff appears for the defendant according to the statute. But there is no form which authorizes a plaintiff to appear in person for a defendant. It may perhaps be a *casus omissus*, or probably the legislature might have intended that an appearance should not be entered for a defendant, unless by a person under the control of the court. It has been frequently held, that the forms of appearance given by that statute must

be strictly pursued. In *Warren v. Love*, 7 Dowl. P. C. 602, where the appearance omitted the name of the attorney; the court held, that the plaintiff might treat it as a nullity and enter an appearance according to the statute. So where an appearance entered by the plaintiff's attorney for the defendant, omitted the words "according to the statute," it was held irregular. *Codrington v. Curlewis*, 9 Dowl. P. C. 968.

Pollock, C. B. There ought to be no rule. The statute means that the forms given in the schedule are to be followed in cases to which they apply. But in cases to which they do not apply, you may still enter an appearance, keeping as close to those forms as practicable.

Parke, B. The 16th section enacts, that all such proceedings as are mentioned in any writ, notice, or warning issued under this act, shall and may be had and taken in default of a defendant's appearance, or putting in special bail, as the case may be. The writ of summons commands the defendant to enter an appearance, and warns him that in default of so doing, the plaintiff may enter an appearance for him, and proceed thereon to judgment and execution. That is a general provision that in *all cases* the plaintiff may enter an appearance upon the defendant's default. Therefore, unless we construe the 2nd section to mean that the forms given by the schedule are to be followed in the cases to which they are applicable, we should be repealing the 16th section. The legislature could never have intended that a plaintiff suing in person should be put to the expense of employing an attorney to enter an appearance for the defendant.

Alderson, B., concurred.

Rule refused.

CHANCERY CAUSES TRANSFERRED.

From the *Vice-Chancellor of England* to the *Vice-Chancellor Knight Bruce*.

By Order of the LORD CHANCELLOR.

Adam v. Barham.
 { O'Halloran v. Cohen
 { Beaton v. Beaton.
 Groom v. Stinton.
 Tarte v. Phillips.
 Bilton v. Frewheela.
 Atkinson v. Glover.
 Day v. Slade.
 Pennyfather v. Pennyfather, 2 causes.
 Radcliffe v. Readett.
 Hollis v. Bryant, 2 causes.
 Howard v. Kirk.
 Reddish v. Howard.
 Glascott v. Long.
 Bradley v. Teale.
 Parken v. Taylor.
 Warde v. Hill.
 Bellringer v. Blagrave.
 Finch v. Secker.
 Crommetin v. Earl of Belfast.
 Cotgreave v. Cotgreave.
 Hemming v. Dingwall.

Bannisters v. Elli.
 Kortright v. Macqueen.
 { Same v. Barlow.
 { Rentell v. Scales.
 Gregory v. Wade.
 Hodgson v. Hodgson.

THE EDITOR'S LETTER BOX.

We always willingly insert any statement which appears necessary for the vindication of professional character; but we think that as Mr. Pyke's petition has already appeared in *The Times* newspaper, it cannot be useful to him or our readers to repeat it here.

Was the name of our correspondent at Worcester inserted in the London Gazette as a Master Extra? The names in our monthly list are taken therefrom.

We think that the taxing Masters in Chancery, on taxing costs between solicitor and client for conveyancing business done in a suit, would allow such charges as are set out in the list referred to; especially that of "6s. 8d. to a purchaser's solicitor for perusing abstract every three sheets, in addition to counsel's fees for advising on abstract." The counsel's fees are of course in addition to the solicitor's 6s. 8d. for every three sheets. The amount of counsel's fees must depend on the nature of the case, not the length only. On a common law taxation similar costs would, we believe, be allowed.

The charge allowed for drawing conveyances is 1s., not 1s. 4d. per folio; fair copy 4d., not 6d.; and engrossing 8d. Parliamentary charges are double that amount.

The letter regarding dealings with an heir on his coming of age shall be inserted.

The letter of G. J. upon the Law of Insolvency is important, and shall receive early attention.

The project of a literary institution for attorneys' and barristers' clerks shall be considered.

To a subscriber at Birmingham we can scarcely venture to recommend, amongst so many able competitors, the work he requires; but probably Smirke's Edition of Roscoe and Bagley's Practice will meet his twofold view.

It is confidently stated that parliament will not meet until the first week in February. The projects of Law reform, we hope, therefore, will be better matured than they have been on former occasions. Amongst other rumoured changes, it is said that the Small Debts Act has been found so defective that it must be altered or amended before it can be carried into operation.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 19, 1846.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

PROPOSED ALTERATIONS IN THE BANKRUPT AND INSOLVENT LAWS.

It is rumoured that extensive and important alterations are contemplated in the laws relating to bankrupts and insolvents, and also in the tribunals especially charged with the administration of those laws. The frequent changes that have taken place in those branches of the law, beginning about the period when Lord Brougham was elevated to the House of Lords, and recurring nearly during every succeeding session of parliament,^a obtains for any rumour of this nature a ready credence; whilst the universal dissatisfaction which the existing state of the law and its administration has created, and which now begins to be more strongly felt and expressed by the trading and commercial community than even by professional men, causes any proposed alteration to be regarded without apprehension.

It is said that a bill has been prepared, under the immediate direction of the Lord Chancellor, which is to be presented to parliament at an early period of the next session, for the purpose of transferring the jurisdiction now exercised by the Commissioners of the Court of Bankruptcy, in regard to insolvents, to the Commissioners of the Court for the Relief of Insolvent Debtors.

Our readers are for the most part aware, that the jurisdiction of the commissioners

of bankrupt in matters of insolvency, has no more remote origin than the statute 5 & 6 Vict. c. 116,^b which enacted, that any person not being a trader, or being a trader and owing less than 300*l.*, might petition the Court of Bankruptcy for protection from process. Previously to the passing of that statute, the administration of the law as regards insolvent debtors, was exclusively vested in the commissioners of the court for the relief of insolvent debtors; but it was not competent for any person to petition that court as an insolvent, who was not in actual custody. The statute 5 & 6 Vict. c. 116, followed by the statute 7 & 8 Vict. c. 96, enabled persons who were unable or unwilling to pay their debts, to avail themselves of the benefits of the laws passed for the relief of insolvent debtors, by petition to the Court of Bankruptcy, without having been previously subjected to any personal restraint or inconvenience. Moreover, after the statute 7 & 8 Vict. c. 96 came into operation,^c a debtor who had delayed taking advantage of the provisions of the stat. 5 & 6 Vict. c. 116, until he was arrested, obtained his immediate discharge from custody upon filing his petition in the Court of Bankruptcy,—without any previous investigation, or any security being taken for his appearance when the day for investigation arrived,—whilst a prisoner who petitioned the court for the relief of insolvent debtors, and desired to obtain his discharge from custody, before his case was heard and investigated, could only effect this ob-

^a No less than fifteen statutes have been passed since the 1 Will. 4, 1831, making extensive and important alterations in the Laws relating to Bankrupts and Insolvents.

VOL. XXXIII. No. 980.

^b This Act obtained the Royal Assent Aug. 12, 1842.

^c The 9th August, 1844.

ject by giving sufficient bail for his appearance when the day of hearing arrived.

The superior facilities which the Court of Bankruptcy afforded to persons who either suffered from or dreaded the hostility of creditors, were too obvious to be overlooked and too advantageous to be neglected. As might be supposed, a considerable number of debtors availed themselves of the tempting opportunity, and took advantage of the wide portal opened by the legislature: Basinghall Street was thronged with insolvent petitioners, whilst the old court in Portugal Street, was well nigh deserted. The old court, however, was still legally as well as locally *in esse*. It reminded one of Herculaneum or Pompeii without the ruins. The machinery which had been deliberately created, perfected by experience, and found after a long trial to be amply sufficient for administering the affairs of all the insolvents in the kingdom, continued unbroken, and without any abatement of its capacity or power. The four learned and experienced commissioners, and all their subordinate officers, remained exactly as before the new law came into operation. The danger was, that the admirable machinery would grow rusty for want of use, and the learned commissioners involuntarily become sinecurists, instead of being useful and efficient public servants. That the court for the relief of insolvent debtors should be left in all its integrity, but without any insolvents to relieve, was a result which we can scarcely suppose it possible those who suggested and framed the recent alterations in the law could have contemplated. The changes adverted to, however, nearly produced this result, and the fact that any portion of the business connected with insolvents, continued to be administered by the insolvent commissioners, appears to have been as much matter of accident as design, and to have arisen from causes not very difficult to be explained.

The Court of Bankruptcy was established with a view to the administration of a somewhat complicated state of law, applicable to the affairs of merchants or traders having considerable assets. The inevitable expenses consequent upon working a fiat in bankruptcy, renders such a system wholly inapplicable to cases where there is little or no estate to be administered. Much of the practical business under a bankruptcy is transacted in the office of the official assignee, an officer, upon whom onerous duties are imposed—

in whom great confidence is placed—and whose services are remunerated wholly by the payment of a per centage on the money which is realized from bankrupt estates. A court thus constituted was not, without being previously altered and remodelled, a peculiarly promising tribunal for administering the affairs of insolvent debtors whose estates do not in one instance out of a hundred, produce a dividend of a shilling in the pound. The commissioners of bankruptcy did not appear to be particularly grateful to the legislature, for the confidence manifested by throwing the weight of insolvency business on their shoulders. The acts creating this new jurisdiction were framed in such a manner as to suggest numberless doubts and difficulties, in cases in which it was peculiarly desirable that the intention of the legislature should be explicitly declared. Each of the bankrupt commissioners took his own view of the provisions of the statute he was called upon to administer. The one, lent a ready ear to every technical objection that could be urged against an insolvent petitioner. The other, thought it his duty to put such a construction on the statutes as was consistent with his own ideas of equity and justice. The law allowed of no appeal. Each commissioner pursued his own course. There was no approach even to uniformity of decision; but the commissioners displayed a wonderful unanimity in disparaging, and we had almost written, execrating, the law they were especially selected to administer.

After a short interval insolvents began to discover, that although the door to the Court of Bankruptcy was open, the passage through it was narrow, and if not beset with difficulties, was clouded by uncertainty. Those who were well advised, therefore, and who were also in a position to petition the Court for the Relief of Insolvent Debtors, with a reasonable prospect of a favourable adjudication, wisely preferred resorting to that tribunal. A sufficient number of insolvents, therefore, continued to petition the court in Portugal Street to afford one of the insolvent commissioners employment for two days in every week, and the insolvent circuits were continued three times a year, with an expenditure of time and assiduity wholly disproportioned to the diminished amount of business requiring attention.

Every one has heard of the great philosopher who, desiring to allow a favour-

rite cat as well as her kitten, free access to his library, directed the house-carpenter to make two holes in the door proportioned to the size of his feline visitors, and when reminded that the great cat and her miniature might find their way through the same aperture, candidly declared that the obvious sufficiency of a single outlet had escaped him. The great legislative philosopher who devised the new insolvency law would seem to have been labouring under a similar degree of abstraction. If it were determined to be expedient, or desirable that persons in insolvent circumstances should obtain the benefit of the insolvent laws without being subjected to the annoyance of arrest, or the restraint of a prison, why not authorise the Court for the Relief of Insolvent Debtors to administer the law thus modified? Why should the altered law be carried into execution by a tribunal created and adapted for other and different purposes? The arrangement now contemplated, of restoring the jurisdiction in insolvency to the court especially constituted for the administration of that branch of the law, is so manifestly politic and reasonable, the only wonder is that perverse ingenuity should ever have devised a departure from it.

Other alterations with respect to the constitution of the Bankruptcy Court are said to have been determined upon. It is quite notorious that the business of this court, instead of increasing, has gradually diminished. For this many reasons may be suggested, independent of any considerations connected with the prosperous condition of those engaged in trade or commerce. When the duties imposed upon the bankrupt commissioners is abridged, by transferring the jurisdiction now exercised by them as regards insolvents to the Court for the Relief of Insolvent Debtors, and further abridged by the transfer of the jurisdiction conferred by the Small Debts Act, (which converted the bankrupt commissioners into judges of Courts of Request,) to the new County Courts, the strength of the court, and the number of the commissioners, will be manifestly disproportioned to the extent of business remaining to be performed by them. It is therefore supposed to be the intention of the Lord Chancellor, gradually to diminish the number of commissioners as vacancies occur by death or removal. It is also supposed that the number of official assignees will be reduced, as opportunities arise; and this portion of the rumoured

arrangement derives some colour from the circumstance, that no successor has been appointed to the late Mr. Alsager, who filled the office of official assignee, although it had heretofore been the practice, when a vacancy occurred, to fill up the office without any unnecessary delay.

The proposed bill shall be laid before our readers as soon as a copy can be obtained. Meanwhile we shall only express our earnest hope that, whatever may be the nature of the contemplated changes, the expediency of establishing a court of appeal in matters of insolvency, and of rendering the existing right of appeal in matters of bankruptcy effective, will not be overlooked. Property and liberty should not be left in solitary dependence upon the judgment of any individual, however well qualified for the performance of judicial duties. The diversity of opinion expressed and acted upon, by the Commissioners of the Court of Bankruptcy, in the construction of the statutes giving them jurisdiction in matters of insolvency, has not reflected credit upon the administration of the law; and we are quite satisfied the Commissioners of the Court for the Relief of Insolvents would be the first to admit, that the extensive discretion with which they are invested by the law, as regards the apportionment of punishment to fraudulent debtors, as well as in the disposal of property, would be exercised with more freedom and advantage to the community, if they were not restrained and crippled by the consideration, that their judgments are not subject to revision by any other legal tribunal.

LAW OF ATTORNEYS.

AGREEMENT FOR A SPECIFIC AMOUNT OF COSTS.—BILL NOT TAXABLE.

THE courts have in several instances refused to order a taxation of costs where an agreement has been entered into between the attorney and client for a specific sum, as the amount of the costs to be paid. A recent case has been decided in equity on this subject,—before stating which we shall advert to some of the early cases in the Common Law Courts. Thus, in an action brought by an attorney for fifty guineas, upon a special promise of the defendant, for business done in his profession, it was moved, that it might be referred to the Master to see what was due; and that upon paying the same, all proceedings

might be stayed; but the Court of King's Bench said, as this action was founded upon a special agreement, they could do nothing in it, and accordingly the motion was refused.^d So in an action of debt upon a bond, with a condition for the payment of a bill of law charges, it was moved, that the bill might be taxed. But upon the conditions being read, and it seeming to be a special condition of a particular agreement between the parties, the court doubted whether it could be done; but, however, under a rule to show cause; and on the hearing, though evidently inclined against their possessing the power to order a taxation, the court advised the plaintiff to go before the Master to save a suit in equity, which accordingly was agreed to.^e And in another case where a bond had been given five years before, and the vouchers had been delivered up, the court would not refer the bill to be taxed, saying, "an attorney, at this rate, would never be safe."^f

The courts, however, look with great strictness on contracts between solicitors and their clients where a gross sum is stipulated to be paid for costs; but it is important to bear in mind that where there is a special agreement as to the amount of costs, the court will not order a taxation on *petition*, but leave the party to file his *bill* to set aside the agreement. In a recent case^g before the Master of the Rolls the circumstances were concisely as follow:—

Messrs. Whitecombe, Helps, and Wemyss, of Gloucester, were solicitors for the co-heirs of the late Mr. Wood of Gloucester. On an action of ejectment against the devisees being called on for trial, a negotiation for a compromise took place. The devisees offered the heirs 10,000*l.*, and the heirs asked 1,000*l.* clear for each of the six co-heirs, and the payment of all costs, which was refused.

Their counsel, addressing Mr. Helps, the solicitor, said, "Now, Mr. Helps, the matter rests with you, will you allow the parties 1,000*l.* each, and take the remainder for your costs?" to which he replied, "I will." The compromise for 10,000*l.* was then accepted. The settlement was delayed for some time, and when the parties attended to execute the necessary

deeds, Greig, (one of the co-heirs) insisted on his full one-sixth of the 10,000*l.*, he remaining liable to his share of the costs; and he was paid accordingly. Mr. Helps then offered either to carry out the agreement made at the trial, or to deliver his bill in the regular way, and he furnished an account of his disbursements, amounting to 2,944*l.* The five remaining co-heirs, in order to have an immediate and final settlement, agreed to receive the 1,000*l.* each, and to allow the solicitor to retain the remainder for the costs.

The solicitors afterwards, in September, 1843, delivered their bill of costs, amounting to 4,500*l.*, to Mr. Greig, who had not concurred in the arrangement. In June, 1844, the five heirs presented a special petition for the delivery and taxation of the bill of costs.

The Master of the Rolls decided that there appeared to be evidence of such a contract between the parties as to preclude him from ordering a taxation. "I make no observation," said his lordship, "on the agreement, nor on the right of the petitioners to set it aside, because, sitting here upon petition, I have no jurisdiction to set it aside, and I must consider it valid until that has been done."

And his lordship, commenting on the facts of the case, said—

"The petitioners are five of the six co-heirs of the late Mr. Wood of Gloucester, whose property has been the subject of litigation in almost every court. Conceiving they had a right to be established against the devisees under his will, they entered into litigation with them, in which the respondents acted as their solicitors. After a great expense had been incurred, it was suggested that it would be advisable to effect a compromise. A sum of 10,000*l.* was offered, and refused. Several of the parties were desirous of securing 1,000*l.* each, clear of costs, and it seems their counsel suggested to Mr. Helps, 'The matter now rests with you, will you clear the parties 1,000*l.* each, and take the remainder for your costs?' to which Mr. Helps, for anything that appears to the contrary, being both just and generous, consented. Such was the impression on his mind in the communication between him and counsel. Mr. Helps relied on his influence over his clients, to induce them to agree on what had been proposed. This was not, however, conclusive, for it does not appear to have been considered that the parties present, and certainly not those absent, should be irrevocably bound by the agreement. They might have afterwards said, that 4,000*l.* was more than sufficient to pay the costs, and we require the balance. When the parties afterwards met to complete, Greig, the most active party amongst the heirs, did not approve of the arrangement; he required the person acting for the devisees to pay him the full one-sixth of the 10,000*l.*, and he obtained pay-

^d Trin. 5 Geo. 2; 2 Barnardist. K. B. 164.

^e Hil. 2 Geo. 2, 1728; *Bagwell v. Jobson*, 1 Barnardist. K. B. 144; Pasch. 2 Geo. 2, 1729.

^f Cas. Pr. C. P. 109; Pr. Reg. 37, S. C.; but see 1 Barnard, 144, 5.

^g *In re Whitcombe*, 8 Beav. 140.

ment otherwise than through Helps. The other parties met together, and a discussion went on a considerable time as to the settlement. Now, with respect to the five petitioners, Helps had in his hands a sum of 1,666*l.*, belonging to each. Ultimately each agreed to receive and received 1,000*l.*, each took from Helps a receipt in full of all demands for law charges, and thereby extinguished all claim and demand on the part of their solicitors. I think that this receipt and these circumstances, while they stand, show such an agreement, that I, under the jurisdiction I am now exercising, have no authority to order a taxation."

His lordship concluded his judgment as follows:—"I must remark on the great danger which solicitors incur when they enter into such arrangements with their clients. An agreement like this between a solicitor and client for taking a fixed sum in satisfaction of all demands for costs is an agreement which may be perfectly good; but this court, for the protection of parties, looks at every transaction of this kind with great suspicion. The matter may turn out to be perfectly fair and right, still it exposes the conduct of the solicitor to suspicion, and naturally awakens the vigilance and jealousy of this court, seeing that one party has all the knowledge, and the other is in ignorance. But it is not because the transaction may be opened, that, therefore, it is to be considered as open upon an occasion on which the court is exercising a jurisdiction in which it cannot set aside the transaction. The prayer of this petition must be refused, but without costs, as the solicitor has not acted with proper prudence."

LAW OF INSOLVENCY.

5 & 6 VICT. c. 116, AND 7 & 8 VICT. c. 96.

To the Editor of the Legal Observer.

PERSON OF INSOLVENT PROTECTED, BUT HIS FUTURE PROPERTY LIABLE.

SIR,—As I believe it to be a very general opinion among the profession, that 7 & 8 Vict. c. 96, "An Act to amend the Law of Insolvency," &c., in some way discharges debtors from the claims of their creditors, and as I believe that that opinion is an erroneous one, I beg permission to consider briefly its validity.

The view which I wish to establish is, that neither does the final order under 5 & 6 Vict. c. 116, nor under 7 & 8 Vict. c. 96, afford any protection, except to the *person* of the debtor; and that as under the latter act, the debtor's future acquired property does not now vest in the official assignee, but remains the property of

the debtor, it can be taken under an execution founded on a judgment, obtained before or after the filing of the petition.

The 5 & 6 Vict. c. 116, s. 2, authorizes "the commissioner, after petition filed, to give a protection to the petitioner from all process whatever, either against his person or his property of every description; which protection shall continue in force *until* the appearance of the petitioner in court." By sect. 4, it is enacted, that on such appearance "the commissioner may make an order (*final*) for the protection of the *person* of the petitioner from all process, and for the vesting of his estate and effects in an official assignee;" and as by sect. 7, this final order vested the insolvent's future estate in the assignee, it amounted in fact to a protection of future acquired property from an individual creditor's execution; the mode of obtaining such property for the use of the creditors, being prescribed by sect. 9.

But 7 & 8 Vict. c. 96, does not vest the insolvent's future property in the assignees, but only his property at the time of his becoming insolvent. This at least is, I conceive, the necessary effect of sect. 4. "The property of the petitioner shall vest in the assignee," &c.—this must mean his then property; for no act yet passed has so vested future property without expressly naming it. (See 6 Geo. 4, c. 16, s. 63; 1 & 2 W. 4, c. 56, s. 26, and 5 & 6 Vict. c. 116, s. 7.)

The point in issue turns upon this; for if future property remains in the insolvent who has obtained his final order, clearly neither sect. 4, nor the final order under the present act, protects more than his person. The words of the latter are:—"A final order is hereby made to protect the *person* of the said — from being taken or detained under any process whatever," &c.

There is no clause in the act nor in the final order, as in the certificate of a bankrupt or the adjudication of an insolvent prisoner, discharging from claims and demands, but simply this *personal protection*; and unless the future property is vested in the assignee, (which I believe it is not,) I cannot understand what there is to prevent a creditor from putting in force an execution against an insolvent's future assets.

The point is very important, and I am surprised it has not yet been raised. If I am wrong I shall be obliged by some of your correspondents setting me right.

It will be said, perhaps, that if my view is correct, the final order is nearly nugatory. That is true; but the hardship is not so great as that of turning a man loose upon the world apparently discharged, and then when he has, by virtue of this whitewashing, contracted new debts, permitting the assignees to step in and seize his future property for the old creditors, as was the case under 5 & 6 Vict. c. 116.

G. H.

FEES OF ATTORNEYS IN IRELAND.

THE following is a copy of the Table of Fees, Allowances, Charges, and General Rules, to regulate the principles upon which taxation shall be conducted in Common Law business in Ireland: approved by the Judges, at a Meeting held in the Judges' Chamber, Four Courts, 25th November, 1844, pursuant to 7 & 8 Vict. c. 107, s. 39.

This document will, no doubt, be compared by many of our readers with the scale of allowances on this side the Channel.

RULE J.

It is ordered by the judges, that the fees, allowances, and charges, mentioned in the following table, shall be the established fees, allowances, and charges to be allowed to attorneys, on taxation of costs in common law business, in respect of all business done from and after the 11th day of October, 1844, subject to such alterations as the judges may from time to time direct; and that in such taxation regard shall be had to the several instructions and directions accompanying the said table.

Instructions.

	£	s.	d.
1 Instructions to proceed or defend	0	6	8

Letters.

2 Letter for payment, or to settle, and copy, if sent	0	3	6
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[N. B. Not to be allowed, unless sent a reasonable time before action commenced.]

3 Other letter, when necessary, and copy	0	3	6
4 Each additional copy	0	1	0

Writs and Process.

5 Capias or subpoena ad respondendum	0	10	0
6 Letters missive	0	10	0
7 Distringas, or other process, original or mesne, to enforce appearance	0	10	0
8 Replevin and recaption (for both)	0	10	0
9 Recordari	0	10	0
10 Pone	0	10	0
11 Attachment	0	10	0
12 Certiorari, or habeas corpus cum causa	0	10	0
13 Procedendo	0	10	0
14 Prohibition	0	10	0
15 Supersedeas	0	10	0
16 Writ of error	0	10	0
17 Venire facias juratores	0	5	0
18 Distringas, common or special jury, with copy of panel	0	6	0
19 Distringas, common or special jury, with clause of view	0	10	0
20 Habeas corpus ad testificandum	0	5	0
21 Subpœna ad testificandum	0	4	0
22 Subpœna duces tecum	0	5	0
23 Commission for witnesses	0	12	6
24 Capias ad satisfaciendum (including testatum)	0	12	6
25 Fieri facias (ditto)	0	12	6
26 Elegit (ditto)	0	12	6

27 Retorno habendo	0	10	0
28 Habere facias possessionem, single demise	0	10	0
29 Ditto, for every additional demise	0	1	0
30 Writ of possession, 1 & 2 Will. 4, c. 31, s. 24, &c.	0	10	0
31 Writ of restitution	0	10	0
32 Levavi facias, or other writ issued after final judgment not herein particularly specified	0	12	6
33 Writ of enquiry, fee	0	6	8
34 Engrossing ditto, per folio	0	0	6
35 Record of Nisi prius, fee	0	13	4
36 Engrossing ditto, per folio	0	0	6
37 Writ of scire facias, fee	0	10	0
38 Engrossing ditto, per folio	0	0	6
39 Alias or testatum scire facias, fee	0	3	4
40 Engrossing ditto, per folio	0	0	6

[N. B. The above fees to include all certificates at foot and endorsements, sealing, and all things requisite to complete the writ or process.]

Præcipe.

41 Præcipe for Chancery writ	0	3	4
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Appearance.

42 Appearance	0	5	0
43 Appearance and defence in ejectment	0	5	0

Term Fee.

44 Term fee	0	6	8
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[N. B. Not to commence for either party until appearance, and to end with final judgment. Not to be chargeable for plaintiff, unless an act in court be done in the term. In cases where several separate pleas or defences are put in by the same attorney, one term fee only to be allowed for all. One term fee to be allowed in ejectment, although no defence be taken.]

Drafts, Engrossments, and Copies.

45 Drawing and engrossing any pleading, 3 folios or under	0	4	6
46 Drawing declarations, and all pleadings, suggestions on record, bills of exceptions, special verdicts, &c. (to include instructions and copies for counsel, when employed,) per folio	0	1	0

[N. B. In cases of difficulty and importance, wherein the pleading is short, an additional compensation for instructions given to counsel may be allowed, but within the rule as to cases for advice of proofs, post, No. 160. Nothing in this schedule is to interfere with the general rule of the 8th May, 1832.]

47 Engrossing ditto, per folio	0	0	6
48 Drawing and engrossing affidavit, when 5 folios or under	0	4	0
49 Drawing affidavit, per folio	0	0	6
50 Engrossing ditto, per folio	0	0	3
51 Drawing and engrossing petition, charge, or discharge, and copy, 5 folios or under	0	6	8
52 Drawing petition, charge, or discharge, per folio	0	0	6

	£	s.	d.		£	s.	d.
53 Engrossing ditto, per folio . . .	0	0	3	order, notice, consent, summons, or the like . . .	0	1	0
54 Drawing and engrossing recognizance, or bail-piece . . .	0	6	8	81 All copies of documents not herein otherwise provided for, for each folio . . .	0	0	2
55 Drawing assignment of judgments, 10 folios or under . . .	0	10	0	[N. B. Paper or parchment not to be charged for or allowed in any case, being included in the allowances made in this schedule.]			
56 Engrossing ditto . . .	0	10	0	<i>Attendances.</i>			
57 Drawing and engrossing memorial of ditto . . .	0	6	8	82 Attendance and fee on side bar rule, or to make order of Nisi Prius a rule of court . . .	0	3	4
58 Drawing and engrossing warrant to enter satisfaction of judgment . . .	0	6	8	83 Attendance on each motion in court, or in chamber, not requiring notice, including attendance on counsel . . .	0	6	8
59 Drawing and engrossing submission or award, 5 folios or under . . .	0	10	0	84 Attendance on common motions on notice day of hearing . . .	0	6	8
60 Ditto, for each additional folio . . .	0	1	0	85 Attendance on new trial motions, trials by the record, or law arguments, day of hearing . . .	0	13	4
61 Drawing and engrossing consent or undertaking, 5 folios or under . . .	0	3	4	86 Attendance, while case in the list and not called on, each day . . .	0	3	4
62 Ditto, for each additional folio . . .	0	0	6	[N. B. This fee not to be allowed for any day on which, by the practice of the court, the case is not to be called on.]			
63 Drawing and engrossing receipt for money or other matters, in a cause . . .	0	2	6	87 Attendance to mark judgment . . .	0	3	4
64 Drawing deeds, or like instruments, not herein specially provided for, for each skin of 15 folios . . .	0	15	0	88 Attendance to satisfy judgment, including signing the roll . . .	0	6	8
65 Engrossing ditto . . .	0	15	0	89 Attendance on writ of inquiry or inquisition in Dublin . . .	1	1	0
[N. B. At the same rate for a greater or a less quantity.]				90 Ditto, in the country . . .	2	2	0
66 Filling common bond and warrant . . .	0	12	4	[N. B. These fees to include all attendances for delivery and return.]			
67 Drawing and engrossing any ordinary power of attorney . . .	0	12	4	91 Ditto, on record of Nisi Prius, in Dublin, day of trial . . .	2	2	0
68 Copy deeds for oyer, per folio . . .	0	0	6	92 Ditto, each succeeding day of trial . . .	2	2	0
69 Summons in ejectment . . .	0	5	0	93 Attendance on ditto, while cause in the list unheard, each day . . .	0	6	8
70 Notice that ejectment is brought for nonpayment of rent, or on elegit, or the like . . .	0	5	0	94 Assizes fee, jury being sworn . . .	5	5	0
71 Each necessary copy of declaration in ejectment, summons, and notices, not exceeding 200 copies, as limited by stat. 4 Geo. 4, c. 89 . . .	0	2	6	95 For each day of trial after the first . . .	2	2	0
[N. B. The attorney for the lessor of the plaintiff shall verify the necessity of the service claimed as to each respective individual, to the satisfaction of the officer.]				96 If record at the assizes entered and jury not sworn . . .	2	2	0
72 Drawing notice, particulars of demand, or set-off . . .	0	4	0	97 To be increased on circumstances, but not to exceed . . .	5	5	0
[N. B. The officer may allow for drawing long and special notices, where requisite, at a rate not exceeding 6d. per folio.]				98 As between attorney and client, if the attorney employed at the trial be not a practitioner of the county, the client will be liable to pay him in lieu of the assizes fee, for each day necessarily occupied . . .	2	2	0
73 Copy, ditto, 6 folios or under . . .	0	1	0	99 Also his actual travelling and other expenses, or in lieu of them, per diem . . .	1	1	0
74 Ditto, for each additional folio . . .	0	0	2	100 Attendance on the sheriff, or his returning officer, coroner, or elisor, with writ and for return, or for assignment of bail or replevin bond . . .	0	3	4
75 Service of notice, rule, or order in Dublin on opposite attorney . . .	0	1	0	101 Attendance on registrar, with docket of record, and copy of bill of particulars (with certificate of counsel, where requisite) and to enter cause for trial . . .	0	6	8
76 Certificate of description of defendant, &c. pursuant to statute 9 Geo. 4, c. 35, ss. 8, 9 . . .	0	2	6	102 Attendance and docket for re-			
77 Drawing report, including attendance on the master, &c. for instructions for his report, and drawing rough draft thereof and of schedules, for each folio, or concluding part of a folio, for so many as the signed report and schedules shall contain . . .	0	0	6				
78 Engrossing report and schedules, for each folio . . .	0	0	3				
79 Drawing and engrossing report upon order to tot . . .	0	6	8				
80 Each copy of an ordinary writ,							

	£	s.	d.		£	s.	d.
gistrar, of plea of confession or consent for judgment given, and that cause will not proceed to trial	0	3	4	127 Ditto, in the country, according to distance, not exceeding, exclusive of travelling expenses, per diem	2	2	0
103 Attendance for postea, if not filed on the proper day	0	3	4	128 Attendance on arbitrators, for each hour when business done	0	6	8
104 Attendance to see cause set down for argument	0	3	4	129 Not to exceed on any day	2	0	0
105 Attendance on officer, with notice of motion	0	3	4	130 Attending the parties on execution of deeds, warrants to acknowledge satisfaction, or to see assignments of judgments and memorials executed	0	6	8
106 Attendance for and filling first summons to go before officer or arbitrator	0	3	4	131 Also for each execution at a different time and place	0	6	8
107 Attendance on judge or baron for order and fiat, or letter missive	0	6	8	132 Attending to examine witnesses, in cases of difficulty and importance, not to exceed in any case	2	0	0
108 Attendance and docket for judge or baron, with notice for new trial motion, or conditional order for setting aside verdict or nonsuit, together with the necessary documents	0	3	4	133 Attending to inspect or exhibit documents	0	6	8
109 Attending noting books for the judges, indexing and endorsing the points of exception or objection, including instructions and attendance on counsel for the points, if necessary.	0	13	4	134 Attending counsel with briefs, cases, pleadings when special refreshers, retainers, to appoint consultations, this to include attendance on all the counsel, no matter how many	0	6	8
110 Attendance before the master on special reference	0	6	8	135 Attending consultation (see rule of 8th May, 1832.)	0	13	4
111 Attendance to enrol memorial of assignment of judgment	0	6	8	136 Each necessary attendance not herein otherwise provided for, for the first hour	0	6	8
112 Attending to amend pleadings under order or by consent	0	6	8	137 If on a public board, for the first hour	0	13	4
113 For all the attendances in the offices of the courts in cases where no term fee allowed	0	6	8	138 For each further hour on same day	0	6	8
114 Attending to draw money out of court	0	13	4	139 Not to exceed on same day	1	0	0
115 Attendance to strike special jury	0	6	8	140 Each necessary attendance on the client or on any other person by his directions, for the first hour	0	6	8
116 Attendance to reduce special jury	0	6	8	141 For each succeeding hour employed	0	6	8
117 List of 48 names	0	2	0	142 Not to exceed on same day	1	0	0
118 List of 24 names	0	1	0	143 On appointment of a new attorney, for his necessary instructions to enable him to obtain a knowledge of the cause, in ordinary cases	0	6	8
119 Attendance inquiring as to solvency of sureties proposed	0	6	8	144 To be increased when the officer is of opinion the labour deserves it, but not to exceed	2	0	0
120 Attendance, putting in or opposing special bail or sureties	0	6	8	[N. B. This is not to be allowed against the party, except in cases where the change arises from absolute necessity, not from the voluntary act of the client.]			
121 Attendance at the stamp office	0	6	8	145 Drawing memorandum of judgment, &c., and copy for the register, under the 7 & 8 Vict. c. 90, s. 2, &c.	0	5	0
122 Attending to settle and pay debt and costs (debt 20 <i>l.</i> or upwards)	0	6	8	146 Attending the register	0	3	4
123 Ditto, debt under 20 <i>l.</i>	0	3	4	<i>Signing Fee.</i>			
[N. B. In actions of assumpsit, debt, or covenant, for sums under 20 <i>l.</i> , or within the proviso of the rule of 8th May, 1832, the instructions and attendances shall be taxed at the scale of charges mentioned in this schedule, reduced by one-half, and if for sums under 5 <i>l.</i> no instruction or attendance shall be allowed. But this shall not extend to actions brought for the purpose of trying a right to property more extensive than the sum sued for.]				147 Signing pleadings, affidavits, reports, or other documents, to be filed pursuant to any statute or rule of court	0	2	6
124 Attending and obtaining or giving undertaking to appear, including undertaking	0	6	8	[N. B. The signing fee for writs and records is included in the allowances above made for those instruments.]			
125 Attendance to pay money into court	0	13	4				
126 Attending on a view jury, in Dublin	0	13	4				

Searches.

148 Search in the office for appearance, declaration, or the like . . . 0 3 4
[N. B. These searches to be allowed when the time limited for performing the act has expired.]

149 Search if ejectment moved on, unless ejectment be moved on upon the first day of term . . . 0 3 4

[N. B. Where several separate defences are taken in ejectment by the same attorney, one search only to be allowed.]

150 Search for judgment, on reviving satisfying, or assigning, (to include instructions) . . . 0 6 8

151 Docket and copy for requisition for search to be made by the register of deeds . . . 0 5 4

152 Attending register of deeds for office search, whether common or negative . . . 0 13 4

153 Search on adversary's title in registry of deeds by attorney, previous to bringing ejectment, for each hour he is actually and necessarily employed in making the search . . . 0 6 8

Briefs.

154 Draft brief for trial, comprising statement of the case, testimony of the witnesses, and necessary observations, for each brief sheet containing 6 folios . . . 0 3 4

155 Copies of ditto; also copies of the necessary pleadings and documentary evidence, for each sheet containing 6 folios . . . 0 2 0

156 Draft observations and copy for counsel on motion, law argument, or the like . . . 0 5 4

157 Copies to accompany ditto, of affidavits, pleadings, and other necessary documents (when they exceed 6 folios), each sheet containing 6 folios . . . 0 2 0

158 Docket of retainer, refresher, or the like, for the first counsel . . . 0 3 4

159 For each of the other counsel . . . 0 1 0

160 Copy statement of case for counsel to advise proofs (see rule of 8th May, 1832,) for each sheet of 6 folios . . . 0 2 0

[N. B. The draft of such case allowed where brief for trial not afterwards made. Copies of pleadings and documents sent with case for proofs must be afterwards incorporated with briefs for trial]

Taxation of Costs.

161 Draft costs between party and party, per page, to contain on the average 20 items . . . 0 1 0

162 Copy . . . 0 0 6

N. B. In costs between attorney and client, no draft allowed; nor copy, save that if the at-

torney had furnished his bill to his client for payment, and he is afterwards obliged to furnish his bill pursuant to the statute, or if he be obliged or requested to furnish extra copies to his client, or to third parties (as receivers in chancery, &c.,) or for taxation, then the extra copies are to be allowed for at the above rate.]

£ s. d.

163 Attendance to tax costs, not requiring summons . . . 0 3 4

164 Ditto, on summons, debt under 20l. . . . 0 3 4

165 Ditto, on summons, debt or demand 20l. or upwards, or in ejectment, replevin, case, or trespass, &c. . . . 0 6 8

166 For each successive hour . . . 0 6 8

167 Examining a bill of costs by the attorney opposing it on taxation for each 200 items, or less . . . 0 3 4

Enrolments.

168 On enrolling judgment, or other matter of record prepared by the officer, for the first roll . . . 0 5 0

169 For each succeeding roll . . . 0 2 6

170 Half roll, 1 & 2 Geo. 4, c. 53, s. 30. . . . 0 1 3

Transcripts.

171 Transcript for the court of error, fee . . . 1 0 0

172 Engrossing ditto, per folio . . . 0 0 6

RULE II.

The above table being intended as fixing merely the amount of fee or charge in each item, whether between party and party, or attorney and client, is not, from the introduction of such items, to be construed as thereby authorising any charge, or entitling the attorney to any fee, as between party and party heretofore only allowed, or which ought only to be properly charged between attorney and client, or the contrary; but in so far as the officer in the taxation of costs may have, or may think fit to exercise, under the control of the court, a discretion on the subject of particular charges, it is considered by the judges to be desirable that the fees and charges, between party and party, should assimilate as nearly as may reasonably and justly be attainable to those between attorney and client.

RULE III.

The taxing officers are authorized, from time to time, to issue general directions respecting the mode of preparing affidavits to be used before the taxing officers for the purpose of regulating the taxation, and likewise the mode of preparing bills of costs, and the use to be made of printed forms of bills of costs in common cases, and the charges to be made for costs to which such forms are applicable.

RULE IV.

The judge at Nisi Prius may, if he shall think fit, certify on the back of the record at

the trial, that, in his opinion, any particular witness or witnesses produced at either side was or were unnecessary; and, in the taxation of costs, the expenses of the said witness or witnesses shall not be allowed against the opposite party.

(Signed) EDWARD PENNEFATHER,
JOHN DOHERTY,
MAZIERE BRADY,
CHARLES BURTON,
RICHARD PENNEFATHER,
ROBERT TORRENS,
P. C. CRAMPTON,
L. PEPRIN,
JOHN RICHARDS,
N. BALL,
THOS. LEFROY,
J. D. JACKSON.

LEGAL EDUCATION.

LECTURES AT THE INNS OF COURT AND INCORPORATED LAW SOCIETY.

OUR readers are aware that the Benchers of the *Middle Temple*,—to whom the honour belongs of taking the lead in the recent improvements in the Inns of Court,—have formally appointed Mr. Long, as the Lecturer or Reader on Jurisprudence and Civil Law.

The members of *Gray's Inn*, as appeared in our number for the 28th November, have invited lecturers on Real Property and Conveyancing, for which they intend, like the *Middle Temple*, to devote 300*l.* per annum for three years.

The Society of *Lincoln's Inn* will probably undertake the department of Equity, but the benchers have not yet made the announcement.

the *Inner Temple*, the "Readings" commenced in a former Term by Mr. Starkie, Q. C., have been continued, and the following is the syllabus thereof:—

HEADS OF READINGS ON THE LAW OF ENGLAND AS REGARDS COMMUNICATIONS BY WORDS, PICTURES, OR OTHER SIGNS.

PRELIMINARY observations on the importance of this class of laws.

1st. As a branch of civil policy,

2ndly. As connected with science and literature.

3rdly. As regards its constant operation on the daily commerce of the society.

4thly. As illustrative of the nature and genius of the common law of England.

Reference to the late important alterations by Lord Campbell's Bill.

Such communications distinguished as they regard

1. Personal Reputation.
2. Public Interests.

The substantive right to protection in re-

spect of personal reputation rests on principles of natural justice.

Adjective provisions in respect of injuries to personal reputation are either

Remedial or
Preventive.

Of the fundamental enlarging and restraining principles on which the remedial law is founded.

The remedial law is not co-extensive with its fundamental principle, but limits the remedy to defined cases.

Of the limits of the remedial law in respect of communications which

1. Cause special damage.
2. Impute a crime.
3. Infection by a loathsome disease.
4. Tend to hurt a man in his profession, trade, or vocation.
5. Or in his official character.
6. Or to cause his disherison.
7. Or which are published in writing, &c.
8. Or disparage the magnates.

Such limits considered as regards

1. Their distinctness.
2. Practicability.
3. Accordance with principle.

Limits of the remedial law as regards

1. The publication of defamatory matter.
2. The intention of the publisher.

Of the exclusion of the remedy.

1. Where the matter published is true.

Remarks on this doctrine.

2. When the imputation is justified or excused

At common law	{	Absolutely
or		or
By statute.	{	Sub Modo.

Of failure of the defence from excess, &c.

Of the application of rules which restrain the remedy as regards

The publication of parliamentary or judicial proceedings matters of hearsay matters of criticism, &c.

Of the limitation of the remedy in point of time.

Remarks on the subject of pleading evidence verdict costs.

Observations on the subject of palinode or recantation.

Reference to some singular provisions in ancient laws on this subject.

Preventive provisions concerning personal defamation.

Actually preventive:

1. By process of law, *i. e.* by binding to the good behaviour, &c.
2. Without process by the destruction, &c. of a noxious publication.—Of the statute 10 Geo. 2, c. 28, as to licensing dramatic performances.

General principles of the PENAL LAW as regards *personal defamation*.

Preservation of the public peace.

The affording protection to reputation beyond that afforded by the civil remedy.

Limits of the penal law concerning personal defamation (previous to the late statute).

As regards the *nature of the communication*.

The means used for communication by writing, &c.

Extensive sense of the word Libel.

Observations on the necessary generality of such limits.

Illustrations in reference to the Roman law and to the modern laws of foreign nations.

As regards the *fact of publication*.

Doubts whether the mere composing of a libel ought generally to be prohibited under penalties.

As regards the *intention of the publisher*.

The exclusion of liability in respect of

The truth of the matter published,

The occasion of publishing.

Provisions of the late stat. 6 & 7 Vict. c. 90.

Observations on the several branches of this statute, especially the 4th section, which visits the publisher of a calumny who knows it to be false with an aggravated penalty.

On the 14th, by which the truth of the matter published constitutes a justification if it was for the benefit of the public that the matters so charged should be published.

On the 7th as to evidence.

On the statute commonly known as Mr. Fox's Bill.

Observations on the state of the civil as compared with the criminal branch of the law before Lord Campbell's Bill.

Of publications which are criminal in respect of their connexion with various definite offences.

Of such as are substantially criminal,

As contrary to sound policy,
religion,
morals.

Of *preventive* provisions by the authority of a public licenser, &c.

Of *penal* provisions in restraint of such publications.

Of the fundamental enlarging and restrictive principle on which *penal restraints* depend.

Of libels against the state, its constitution, government, and functionaries.

Observations on the provisions of the

33 Geo. 3, c. 78, s. 24.

11 Geo. 4, and 1 Will. 4.

On the common law rules as to seditious libels, assemblies and conspiracies.

On the common-law authorities as to contempt against the royal person and dignity.

The provisions of the 6 Anne, c. 7, s. 2, as regards the title to the Crown under the Act of Settlement.

The provisions of the 13 C. 2, c. 1. s. 3, as to legislative prerogative of the Crown.

Of the 25 H. 8. as to promulgations by the clergy.

Of false prophecies, and false news and rumours—and some other publications of a like description against sound policy.

The common-law rule, as to reflections on foreign potentates.

Of the statutes of *Scandalum Magnatum*.

On the common-law rules in restraint of words or writings, affecting the administration of justice.

By influencing the conduct of jurors, or, as tending to bring the administration of justice into contempt.

Of libels, &c. against *religion*.

Of the crime of *blasphemy* at common-law as defined by Hawkins, b. 1, c. 5, ss. 1, 2, 6, and Sir W. Blackstone's Comm. 59.

Provisions against blasphemous libels, &c., by stat. 60 Geo. 3, and 1 Geo. 4, c. 8, ss. 1 and 4; 11 Geo. 4, and 1 W. 4, c. 73.

The provisions of the stat. 9 & 10 W. 3. c. 32, as to publications denying the truth of the Christian religion or of the Old or New Testaments.

Of the alterations made by the stat. 53 Geo. 3, c. 160, as regards the doctrine of the Trinity.

The common-law definitions of heresy and apostasy.

The provisions of the statute 1 Ed. 6, c. 1, s. 1, against reviling the sacrament.

Other statutes connected with the subject.

General illustrations from decided cases.

Offences by words or libels against morals.

Progress of the law as regards such offences.

Of the palinode in matters of religion.

Concluding observations.

In order to complete the information relating to the measures thus adopted for the instruction of the present and future members of the profession, we shall put on record the subjects of the lectures at the Incorporated Law Society, which are now in course of delivery. This is the 14th year of the lectures at that institution. They are as follow:—

EQUITY AND BANKRUPTCY LECTURES.

By Samuel Miller, Esq.

During the ensuing session the subject of these lectures will be,—

1. On the jurisdiction of Courts of Equity in relation to equitable Mortgages.
2. The practice of Courts of Equity in relation to Injunctions.
3. The appointment and duties of Receivers.
4. The law and practice of Courts of Equity in relation to Costs.
5. The alterations effected in the practice of Courts of Equity by the recent General Orders in relation to Appearance and Answers, Pleas and Demurrers.

6. The law and practice of Bankruptcy, with regard to Acts of Bankruptcy, and the Proof of debts.

COMMON LAW AND CRIMINAL LAW LECTURES.

By James P. Wilde, Esq.

Insurance:—Marine—Fire—Life.

The sale of Goods.

The Law of Guarantee.

The relation of Husband and Wife.

The Law of Conspiracy.

The Law regulating unlawful Meetings and Assemblies.

CONVEYANCING LECTURES.

By Fielding Naylor, Esq.

The origin and progress of the Laws of Real Property.

Estates, their nature, qualities, and incidents, including Estate in Fee Simple—Estate Tail—Estate for Life—Estate Tail after Possibility—Curtesy—Dower—Jointure—Attendant Terms—Estates in Joint Tenancy—Coparcenary, and Tenancy in Common.

Uses, their origin—the Statute of Uses—the different kinds of Uses—deeds deriving their effect from the Statute of Uses.

Deeds deriving their effect from the Common Law—their nature and kinds—the formal parts of a Deed and their effect—the Rules concerning the construction of Deeds.

LAW AMENDMENT SOCIETY.

INSURANCE OF TITLES.

At the monthly meeting of this society, on the 2nd instant,—Lord Brougham presiding,—the following Report of the Law of Property Committee was brought forward by Mr. James Stewart, whereby it is recommended that, in connection with a general register, the principle of the *insurance of titles* should be introduced. The report states that

“Experience has established that the opinion of a competent conveyancer as to the safety of a title is a satisfactory test of its validity. Lands are purchased, and money is advanced on the faith of these opinions, and it is very rarely indeed that the title to the lands is afterwards invalidated. But, notwithstanding that a satisfactory opinion has been given as to a title, it is thought necessary on every new dealing with the land that the title should undergo a fresh investigation. The question then arises whether the repetition of investigation extending over the same ground is necessary, whether one investigation of title may not be sufficient, and whether up to the time at which such investigation takes place the title may not be insured, the only risk being where the title is pronounced a good one, the fallibility of that opinion.

“This principle of insurance might, it is contended, be extended to three kinds of title.

“1. Those titles which now pass current as approved titles both at law and in equity; 2. Titles which, although considered good holding titles, are technically unmarketable; and 3. Titles subject to some specific defect, greater or less in extent, according to the particular circumstances of the case.

“In the first class of titles here alluded to, and to a great extent in the other two classes, the object of the proposed insurance would be to have one careful investigation, which should not be repeated; to render all future investigation down to a certain point unnecessary, and in all after dealings with the property, to take up the examination from the period at which it was so examined and ascertained by counsel to be a good title. According to the present practice, the expense of investigating the title is incurred in every case alike, not only over and over again, but as well in the good titles as in the bad. The present expense in regard to titles, says Sir Edward Sugden, in the last edition of his work on Vendors, ‘is in forty-nine cases out of fifty superfluous; but as every one may be in danger all are guarded against. This precaution has very much increased within the last thirty years, but not from any increased danger.’

“In applying the principle of insurance to this class of titles, the terms for insuring against the possibility of eviction should not be high, especially as every day that elapsed after the transaction would diminish the risk, until it vanished altogether, so soon as a good title under the present Statute of Limitations was gained by the purchaser or mortgagee, and all persons claiming under him. Let us, then, suppose that either the state or a public company is willing to undertake this risk, (and doubtless, if it were not a great one, competitors to any amount, as in underwriting, would enter into the field); and if a public company were adopted, it would seem more for the interest of the public to distribute this business among such of the principal insurance offices already established as were willing to undertake it. In doing this, we point out that mode which appears to us to be the best on the whole. But if the general principle is once established, the mode of carrying it into practice might be safely left to the parties undertaking the risk. We will next shortly consider the steps that might be taken in the matter, supposing a public office to undertake this risk. A person wishing to sell, mortgage, or otherwise encumber his property, would first have to make out his title to the satisfaction of the insurer. This would be done according to the usual practice of an insurance office about to lend money on mortgage. The title would be sent to a conveyancer to be selected by the office. If this conveyancer gave an opinion that the title might be accepted, a certificate to that effect would be given by the office, and it would be then dealt with without any inquiry as to the title previous to that date. It would circulate as land the title to which was insured up to that time. The pur-

chaser of such property would be relieved from the present expense and delay attending the investigation of that portion of the title which was so insured, and this insurance might be continued from time to time. If the title were a good one, of course he would have no further difficulty; if it turned out that this was the black sheep in the flock, and he was evicted, he would come upon the insurance fund, and thus the office, or in fact all the persons who had good titles, would pay for the one that had thus turned out bad. The scale of premiums must be a matter of regulation proportionable to the risk incurred; but your committee believe that when it is considered how rarely eviction now takes place, and how many advantages are enjoyed by the existing holder of land in retaining possession, the premium should not be a high one. The expense of the investigation of the title would fall in the first instance on the vendor, (although eventually the profits of the office might enable it to share such expenses); but as the purchaser and all claiming after him would be entirely relieved from such expense, it is reasonable to suppose that he would be willing to pay a larger price, and that as the class of purchasers would be more numerous, the vendor would thus get back his expenses, and probably, something more, in the increased value of his property, while the purchaser would be able to render the lands much more easily available on a future sale or mortgage. The plan would also much facilitate purchases by trustees under a direction to invest in land, in which case the smallest objection to the title usually prevents the purchase being completed. It would also be particularly advantageous in all those cases where, from the vendors being trustees, or from some other cause, no covenants for title are entered into.

"We have hitherto supposed that the title was a marketable title, but let us now consider the second and third classes of titles. Let us suppose that the title was pronounced by the conveyancer who was consulted not to be a marketable title, but a good holding title, or to have some defect more or less substantial, the office might still allow the land to be sold on being properly indemnified by the vendor against the greater risk incurred, whatever that might be. That a great number of titles are safe to hold, though technically unmarketable, is certainly true. Master Senior, in his evidence before the Lords' Committee of 1846, on the Burdens of Land, says:—'I think that there is little of really defective title. Titles almost all seem to be safe for holding; but the difficulty is to transfer them. There are many objections to title as to marketableness, few as to safety.' The same witness goes on to say:—'I believe that this is the only civilised country requiring sixty years' title, or even forty years'; I believe that in almost every country but this the transfer of property is effected in the books of a notary, or a registrar, or some public officer; and that you require only the title of the person who sells.' It is

submitted, then, that the principle of insurance would also apply to this class of titles, and would be found highly beneficial.

"A few general remarks remain to be added. If the purchaser, in any case where the land was insured, were desirous of improving his property, he might, if he thought proper, (if such improvements were not protected by the well known rule of equity as to this,) secure the repayment of these advances by additional premiums, as is now done when extra risks are incurred on life, fire, and marine insurance. It is further to be observed, that the risk of bad title is one which is, now actually incurred by all offices advancing money on land, and that, in fact, in many cases the office might be its own insurer. But it may be said, that the office would be liable to be defrauded, that bad titles would be concocted, with the view of obtaining the value of the land insured, and that collusion would take place between the vendor and purchaser. This committee is, however, of opinion that the proposed system of insurance might be as effectually guarded against fraud as other ordinary dealings which are now profitably carried on. Some fraud might exist, but not in a sufficient proportion to countervail the great benefits which would be obtained by the system. Indeed frauds of this nature might now be committed if it were easy to commit them in cases where money was lent by an office on the security of lands. Still it would be proper to take all precautions against fraud. In case of any attempt to recover any land, the title to which had been insured, the office might have the option given it to defend the action. It would not be unreasonable further to protect the office by enacting severe penalties against frauds, either actual or attempted.

"It has also been urged that in many cases the purchaser would only be partially indemnified by getting back his purchase money, that he makes his purchase from peculiar motives, and that the very piece of land which he buys is what he wishes, and not its mere money value. But when it is remembered that under the present system he may not only lose the land which he has purchased, but also the money which he paid for it without any redress, this committee consider that there is not much in this objection. And it is to be observed that the objection is totally inapplicable to all loans on land by way of mortgage or otherwise, and in these cases the repayment of the money lent would be a complete indemnity. It has also been objected that a subsequent purchaser might not be disposed to take a title guaranteed by the insurance office, but might insist on having the deeds. But this might always be guarded against by the conditions of sale. It has also been urged that the powers possessed by the company of this nature might be used oppressively as against private individuals, but it should be remembered that similar powers are already possessed by all railway companies, to a less or a greater extent, according to the quantity of land which they

have acquired, and such powers are also possessed by many existing insurance companies, by which large sums are constantly invested on the security of land.

"On the whole, this committee, giving due weight to all these objections, are of opinion that the plan which has been laid before them for the insurance of titles to real property is well deserving of serious consideration as the suggestion of a principle, and that it seems capable of being employed, either in connexion with a registry or without it. But if a registry were established it would probably greatly facilitate it. If the committee are right in supposing that our retrospective titles may be worn out and abolished within a period of about twenty years, as is proposed in the second report on registry, a well-arranged system of insurance, by throwing upon a public body the burden of all past defects and complications, and guaranteeing and establishing the registered title during its period of transition, might make the benefit of the register immediate. Or if our retrospective titles be an evil necessarily consequent on the existing state of English society, perhaps an insurance of the title at periodical intervals might alleviate the evil by shortening the inquiry. All the recent labours of this committee have been directed towards the abolition, as far as possible, of retrospective deduction of title, and they are of opinion that the principle of insurance judiciously carried out, may afford important aid towards the accomplishment of this object.

"In carrying out a proper plan of insurance, it is quite certain that legislative assistance would be necessary; but this aid, it is considered, would not be withheld under proper restrictions. The plan proposed would set free and bring into the market a great mass of property which might be immediately dealt with either for sale or mortgage, and a fund to provide against loss would thus speedily be raised. Neither should it be forgotten that the plan particularly facilitates the transfer of small freeholds, which, under the present system, are nearly unmarketable, if a rigid investigation of title takes place."

The report was received, on the understanding that its reception did not pledge the society entirely to the principle, or preclude future discussion on some points of detail.

LITERARY SOCIETY FOR CLERKS OF BARRISTERS AND ATTORNEYS.

WE have received the following letter from the Clerk of a Barrister, and readily give it publicity:—

"I beg leave respectfully to inform you, that I, in connexion with a number of attorneys and barristers' clerks, have united together for the purpose of taking the necessary steps towards founding a Literary and Scientific Institution, which it is intended shall be devoted exclusively

to the benefit of our body. At the present moment the necessity which exists, and the great want experienced by the law clerks generally in not being in possession of an institution of this kind, will at once be sufficient excuse, if any were wanting, for the intended steps which they purpose to take towards the completion of their design. In the first instance, they beg to apprise you of this fact, so that if it should meet with your approbation, you might be pleased to give it a notice in your valuable paper, which would be the means of awakening the dormant energies of the more influential of their body towards rendering them assistance in carrying out their object. As they rely solely on the great *desideratum* which this would be to their body generally, they wish to refrain from making any comparison with respect to the benefits which have accrued to the mercantile portion of the community from being possessed of similar institutions."

[When the details of the plan, and the mode of proceeding are stated, we shall be happy to give the subject our best consideration.—ED.]

SELECTIONS FROM CORRESPONDENCE.

STATUTE OF LIMITATIONS. — FRAUD. — DEALINGS WITH AN HEIR ON HIS COMING OF AGE.

A. is seised of a moiety of large freehold estates, of which B. is entitled to the other moiety. A. attained his majority about thirty years ago,—*immediately* after which, without ever having seen the property or taken any steps whatever to ascertain its value, he sold his moiety to B. at little more than half its value.

C., the brother of B., was A.'s solicitor, and it has lately come to the knowledge of A. that B. gave him 1,000*l.* for *managing* the business, which could not be for investigating the title or preparing the conveyance, as the expenses of the conveyance were borne by A. Looking at the 3 & 4 Vict. c. 27, and considering that this is a gross case of dealing with an heir on attaining his majority, I shall esteem it a favour if any of your readers will favour me with their sentiments, whether after the lapse of time which has occurred, A. is entitled to take proceedings to set aside the conveyance?

C.

NEW COURTS OF REQUESTS.

MR. EDITOR,—The judges in the new courts of requests (which they are, although the idea is extended) will be very much puzzled how to act on the clause requiring notice of defence; in olden times, if a Northumbrian farmer was sued in the county court for a stale debt, his adviser told him he must plead the Statute of *Limitations*; so John went, and when asked about his plea, he recollected well—and said the statute of *lamentations*. Would such a plea do at present? The defendants will in

truth lament, for the common practice in such courts is to find for the plaintiff.

The judges (from whom there is no appeal, however wrong) will either go upon the loose conversational mode of trial, talking with the plaintiff and defendant and deciding with very little evidence, or the strict mode requiring evidence as in the courts above, with variations in the practice. Ought such doings to be without appeal?

Besides, does any one estimate the great, unnecessary, and vexatious litigation for trifling sums, and how much time, journeys, and expense will be incurred in those courts?

S. P.

MISCHIEFS OF LETTER-ENVELOPES.

MR. EDITOR,—In matters of business regularity in correspondence is of very great importance. This was better attended to in former times. They took a sheet of paper of the size required, writing and directing the same paper instead of the present absurd fashion of writing half-a-dozen scraps of the so-called Queen's pattern, and inclosing the whole, perhaps, unnumbered and undated, in an envelope directed in another hand, on which is the only post-mark. Agents and men of business must be annoyed with such letters, and it is too much the practice to destroy the envelope, losing that evidence, 3 Stark. 64; 1 Russ. C. & M. 240; 7 Mees. & W. 515, leaving the letter without a direction or any proof of its being actually sent; the letter, however important, may not have a date, 2 Chitty R. 194; 3 N. & M. 109, or the name of the person to whom it is directed.

Can anyone justify or feel comfortable in such a mode of carrying on business—for a letter, and such is the great point in cases of the Statute of Limitations, may be without its direction and otherwise imperfect, 1 Anst. 228. How did it get to the correspondent, and when? and who is he? It was perhaps an answer to another letter equally important, Esp. 326; it fails, and the plaintiff loses his cause; there may, perhaps, be a laughable attempt to connect the scraps with a wrong envelope.

What a comfort to an agent to send these scraps to a pleader, barrister, &c., or to sort these into a bundle four times more in number than they ought to be; it being a complete puzzle to set them right; and if disturbed for information, all is in confusion.

From the 1st June, 1847, I hope men of business will follow good old times, and will write and direct on the same sheet.

If on a trial of an action for breach of promise of marriage, the only evidence of the promise was in a letter undirected and undated without an envelope, and beginning with Dear Girl, and going over a number of sheets of paper, it would be contended that it was a joke—was never sent—would apply as well to another lady; the plaintiff would either lose his verdict or have trifling damages.

A.

JOINT-STOCK COMPANIES.

SIR,—Mr. Wordsworth, in his work on The Law of Joint Stock Companies, 3rd edition, page 4, lays it down, that shareholders of companies incorporated by act of parliament, are not answerable for the company's debts in their individual capacities; but in cap. 10, page 225, he intimates, it is usual in such acts to have express provisions that the shareholders are not to be so liable; on looking into various Railway Acts it will be found, that the companies are incorporated, but the express provisions preventing the shareholders' liability for the company's debts beyond the shares they hold, are not introduced.

Can any of your subscribers say the effect of the omission of such express provisions, or whether the mere incorporation by itself protects the shareholders from individual liability to all the claims on the company.

INQUIRER.

ANNUAL REGISTRATION OF ATTORNEYS.

WE called attention in our number of the 5th instant, to the provision in the 6 & 7 Vict. c. 73, by which, in order to obtain the Registrar's Certificate to be exchanged for the Stamped Certificate on the 16th, a declaration must be left with the Law Society six days previously, namely, on the 10th.

We have now to notice, that in order to procure the Registrar's Certificate in time to pay the duty on the 31st instant, (and thus entitle the attorney to have his name in the Law List of next year,) the declaration must be left on Thursday the 24th instant,—the office, of course, being closed on Christmas Day.

The taking out an Annual Certificate, being the lawyer's own business, is too often neglected,—like the cobbler who attends to the last of his customers, and last to his wife.

ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

Courts of Equity.

CONSTRUCTION OF STATUTES.

[For the more convenient division of this Series of the Digest, comprising the decisions of the Courts of Equity, the cases relating to the Law of Wills were given in the last number, and we now select all the points recently reported bearing on the Construction of Statutes, in cases which have come before the Court of Chancery.]

ARBITRATION STATUTE.

Jurisdiction of a court of equity.—Demurrer allowed to a bill praying to set aside an award

(not alleged to have been corruptly or unduly obtained) made pursuant to 9 & 10 W. 3, c. 15.

The Court of Chancery is a court of record, within the meaning of the above act; and is thus ousted of any jurisdiction foreign to the enactments of that statute. *Heming v. Swinerton*, 32 L. O. 69.

CHARITY.

Sir S. Romilly's Act.—A petition was presented under Sir S. Romilly's Act, imputing misconduct, and seeking to displace the trustees and alter the management of a charity, in conformity with a decree which turned out to have been reversed. At the hearing a scheme and the appointment of additional trustees were alone asked. The title alleged being plainly erroneous, the court, though of opinion that the two objects asked were proper, refused to direct them on this petition, but dismissed it with costs. *Peyton's Hospital, in re*, 8 Beav. 70.

CONTEMPT.

1. *Commitment.*—*Insolvent.*—An order, under 11 Geo. 4, and 1 W. 4, c. 36, rule 12, for a defendant to remain in custody until answer or further order may be obtained *ex parte*, and need not be served on the defendant; nor is it necessary for a plaintiff who has obtained that order to proceed to take the bill *pro confesso*, under the 13th rule of the act.

If a defendant in custody for want of answer is made an insolvent debtor, the court will not discharge him, although he may be examined in the Insolvent Debtors' Court as to the matters alleged in the bill. *Maitland v. Rodger*, 14 Sim. 92.

2. *Quære*, whether the discharge under the 48 G. 3, c. 123, of a party detained under process of contempt for nonpayment of costs under 20l. has the effect of clearing his contempt so as to entitle him to move. *Oltsfield v. Cobbett*, 1 Phill. 613.

DEBTS.

Payment out of real estate.—In order to obtain a decree for the sale of a testator's real estate for payment of his debts, under the stat. 3 & 4 W. 4, c. 104, it is not necessary that the bill should be filed by a creditor. *Dinning v. Henderson*, 2 Coll. 330.

FRAUDULENT DEVICES.

Breach after death of covenantor.—*Liability of devised estates.*—A lessor covenanted with his lessee for quiet enjoyment of the demised premises, and afterwards devised his real estates, subject to and charged with the payment of his debts. After the death of the lessor, the lessee was evicted, and brought his action of covenant against the executors of the lessor, who pleaded *plene administravit*, whereupon the lessee took out judgment of assets *quando*, &c., and procured the damages to be assessed upon a writ of inquiry. He then filed his bill against the devisees of the lessor, for satisfaction of the damages and costs out of the real estate of the lessor: *Held*, that although damages recovered in an action of covenant, brought in respect of

breaches of covenant happening after the death of the testator, were not a debt within the statute of fraudulent devises, (3 & 4 W. 4, c. 14,) yet they were a debt payable out of the real estate of the testator, under the charge of debts thereon created by his will. *Morse v. Tucker*, 5 Hare, 79.

Cases cited in the judgment: *Earl of Bath v. Earl of Bradford*, 2 Ves. 587; *Lomas v. Wright*, 2 Myl. & K. 769; *Wilson v. Knuthley*, 7 East, 128; *Jenkins v. Briant*, 6 Sim. 603; *Farley v. Briant*, 3 A. & E. 839; 5 Nev. & Man. 42.

INFANT.

1. *Construction of 11 Geo. 4, and 1 W. 4, c. 47.*—*Tenant for life.*—Although where an estate devised in settlement is ordered to be sold for payment of debts, an infant remainder-man may be ordered, under 11 G. 4, and 1 W. 4, c. 47, s. 11, to join with the tenant for life in conveying the estate to the purchaser, yet an effectual conveyance may be made by the tenant for life alone, under the 12th section of the act. *Walker v. Aston*, 14 Sim. 87.

2. *Construction of act 11 Geo. 4 and 1 Will. 4, c. 65.*—The court has not the power under the above act to direct a lease to be made of the property of an infant, unless such property is absolutely vested in the infant in fee or in tail. *Ex parte Leigh*, 33 L. O. 139.

INSOLVENT MORTGAGOR.

Stat. 1 & 2 Vict. c. 110, s. 68.—*Application to Insolvent Court.*—*Provisional assignee.*—*Costs.*—The stat. 1 & 2 Vict. c. 110, s. 68, does not make it the duty of a mortgagee, as against the provisional assignee of an insolvent mortgagor, to obtain an order from the commissioners of the Insolvent Debtors' Court for a conveyance of the equity of redemption; and an offer by the provisional assignee to facilitate the proceedings in such an application does not entitle him to costs in a suit subsequently instituted against him for foreclosure. *Grigg v. Sturgis*, 5 Hare, 93.

LIMITATIONS, STATUTE OF.

1. 3 & 4 W. 4, c. 27, ss. 2, 3, 25, 42.—*Arrears of annuity.*—The testator gave an annuity to A., and charged the same upon all his freehold and leasehold estate. He afterwards devised his freehold estates to trustees, (who were also his executors,) upon trust, (subject to the charge, to and for the use of his grandson and his heirs.) The trustees, being in possession of the estates, paid the annuity to A. during the minority of the grandson, and within twenty years before the filing of the bill by A. against the grandson: *Held*, that such payment of the annuity by the trustees prevented the claim of A. to the annuity from being barred by the Statute of Limitations, 3 & 4 W. 4, c. 27, ss. 2, 3.

That the grandson was not a trustee for the annuitant within the 25th section of the stat. 3 & 4 W. 4, c. 27, or otherwise; and that, under the 42nd sect. of the same statute, the annuitant was not entitled to recover the

arrears of the annuity for more than six years before the filing of the bill. *Francis v. Grover*, 5 Hare, 39.

2. *Liability of the estate of the deceased partner.—Presentment of promissory note.*—*A.* deposited monies with *B., C., and D.,* who were bankers in partnership, and received from them promissory notes, in which they promised to pay him the amount three months after sight, with interest. *B.* died in March, 1837, having appointed *C.* and another his executors. *C.* and *D.* continued the banking business in the same name until 1842, and interest was regularly paid on the notes by the firm until that time,—the payment being indorsed upon the notes, and signed by one of the partners or their clerk. In December, 1843, the executors of *A.* filed their bill against the executors of *B.,* and the devisees under his will, for payment of the amount of the notes out of the personal or real estate of *B.:* *Held,* that the acts of the surviving partners of *B.* had not the effect of taking the debt upon the notes out of the operation of the Statute of Limitations, as against the real or personal estate of the deceased partner. *Way v. Bassett*, 5 Hare, 53.

Cases cited in the judgment: *Atkins v. Tredgold*, 2 B. & C. 23; *Slater v. Lawson*, 1 B. & Adol. 306; *Ault v. Goolrick*, 4 Russ. 430.

3. *Residuary assets.—Execution.*—More than 20 years after the death of a testator, the representative of one of his executors, and the residuary legatee under his will, file a bill against the representative of the co-executor, to recover residuary assets of the testator, alleged to have been possessed by the co-executor. The plaintiffs are barred by the statute, 3 & 4 W. 4, c. 27, s. 40, as to assets possessed by the executor more than 20 years before the filing of the bill, but they are not barred as to assets possessed by him since that time. Defendants, by their answer, claim the benefit of the "Statute" of Limitations. This is tantamount to claiming the benefit of the Statute Law of Limitations, and entitles them to the benefit of any Statute of Limitations that is applicable to their case. *Adams v. Barry*, 2 Coll. 290.

Cases cited in the judgment: *Prior v. Horniblow*, 2 Y. & C. 200; *Foster v. Hodgson*, 19 Ves. 180.

4. *Annuities.—Charity.*—Testator devised lands to trustees and their heirs, upon trust to grant and convey the same to the use of *J. W.* for life, subject, nevertheless to, and charged with four annuities, to commence upon the death of *X.*; three of which were paid to three different charitable institutions, (two of them being corporate bodies,) and the fourth to the poor of a parish; and after the death of *J. W.* subject to the annuities, to the use of his first and other sons in tail; and he directed the said several annuities to be paid (not saying to whom) on the days therein mentioned, and expressly charged his estate with the same.

X. died more than 20 years before the filing

of the bill to establish the charitable devises, and no payment or other satisfaction was ever made on foot of the annuities. No conveyance had been executed by the trustees; but *J. W.* had, since the death of the testator, been in possession of the estates; and he and his eldest son suffered a recovery and resettled them.

Held, that the right to recover the annuities was not barred by the 3 & 4 Will. 4, c. 27, the trusts for the charities being an express one, within the meaning of the 25th sec. of that act. Charities are, equally with other trusts, within the operation of the 3 & 4 W. 4, c. 27.

Every charge on an estate does not create a trust, although it imposes a burden; but it may create a trust depending on the nature of the charge. If the gift is an express one, and if the person taking the estate is bound to give effect to the gift as a trustee, then it is an express trust.

Where a testator gives an estate to one, subject to the charge, the person to pay the charge is the person who is liable to the burden; and this, in the case of a charity, impresses him with the character of trustee for the charity. *The Commissioners of Donations v. Wybrants*, 2 J. & L. 182.

Cases cited in the judgment: *Stackhouse v. Barnston*, 10 Ves. 467; *Mills v. Farmer*, 19 Ves. 483; *King v. Denison*, 1 Ves. & B. 260; *Salter v. Cavanaugh*, 1 D. & War.; *Phillips v. Munings*, 5 M. & C. 16.

5. *Promissory note.*—*A., B., and C.* made a joint and several promissory note. *A.* died, leaving *B.* his executor. *C.* being afterwards sued on the note, pleaded the Statute of Limitations; and the plaintiff, in order to take the case out of the statute, proved a payment of interest on the note by *B.* within six years: *Semle,* that the plaintiff was entitled to recover, without reference to the question whether *B.* had paid such interest as the executor of *A.* or as a party to the note. *Griffin v. Ashby*, 2 C. & K. 139.

MUNICIPAL CORPORATION ACT.

1. *Jurisdiction of the Court of Chancery.—Compensation awarded.—Wrong principles.*—Under the Municipal Corporation Act, officers "removed" under its provisions became entitled to compensation. *A. B.,* the then town clerk, made no formal surrender of his office, nor any attempt to procure his re-appointment, or to contest the election of *C. D.,* who was appointed town clerk. *Held,* that this constituted a removal of *A. B.* from his office. *Attorney-General v. Corporation of Poole*, 8 Beav. 75.

2. *Compensation for office.*—For the purpose of establishing a claim to compensation for the loss of a connected or dependent office, it ought to be shewn—1st, That the office was connected or understood to be connected with the loss of the principal office, but it is not required by the act that the connected or dependent office, or the office understood so to be, should be itself a corporate office. *Attorney-General v. Corporation of Poole*, 8 Beav. 75.

3. *Clerk of peace and magistrates.—Compensation.*—*Held*, that the circumstance of a town clerk having continued for some time after he was removed from the office, to perform the duties of clerk of the peace and clerk of the magistrates until other clerks were appointed, did not in any way interfere with his right to compensation for the loss of those offices. *Attorney-General v. Corporation of Poole*, 8 Reav. 75.

4. *Solicitor.—Compensation.*—The town clerk of Poole, who held several offices at the time of the passing of the Municipal Corporation Act, was removed. *Held*, that he was entitled to compensation for the following connected offices:—Solicitor to the corporation, clerk of the peace, magistrates' clerk, solicitor to the quay committee, solicitor to the water-bailiff, and prothonotary of the weekly court of record; and that he was not entitled to compensation for the offices of solicitor to the coroner, under-sheriff, solicitor to the overseers and guardians of the poor of the town and county, solicitor to the surveyors of highways, and solicitor to the lamp and watch commissioners. *Attorney-General v. Corporation of Poole*, 8 Reav. 75.

NEWFOUNDLAND COURT OF EQUITY.

Stat. 5 G. 4, c. 67.—What defence open.—Declaration in debt charged that defendant was indebted to plaintiff in 8883*l.*, by virtue of a decree and sentence of the Supreme Court of Newfoundland, (established by stat. 5 G. 4, c. 67,) in a cause on the equity side of the said court, wherein the now plaintiff and others were plaintiffs, and the now defendant was defendant, by which decree it was ordered that the defendant should pay plaintiff the said sum.

(1.) Plea, that the decree was made in respect of matters of trust and executorship accounts, not cognizable in a court of law. *Held*, bad, debt being maintainable at law on a decree of a colonial court of equity, simply ascertaining a balance and ordering payment by defendant to plaintiff.

(2.) Plea, that plaintiff sued in the supreme court as widow of *H.* in right of *H.*, without showing any right of representation to warrant such suit; and that the decree was made on matter of complaint solely in right of *H.* *Held*, bad, because whatever constituted a defence in that court ought to have been there relied on; and because this court would assume that right had been done there, unless something appeared to have been done repugnant to natural justice.

(3.) Pleas, showing a set-off for debts from *H.*, or his estate, to defendant. *Held*, bad, because the plaintiff sued in her own right in this court, and the defence, if available at all, was one which ought to have been made in the supreme court. *Henderson v. Henderson*, 6 Q. B. 288.^a

^a This is given with other equity cases on the construction of statutes, though the point was decided by the Court of Queen's Bench.

Cases cited in the judgment: *Carpenter v. Thornton*, 3 B. & Ald. 52; *Sadler v. Robins*, 1 Campb. 253; *Henly v. Soper*, 8 B. & C. 16; *Houlditch v. Donegal*, 8 Bligh, N. S. 301; *Smith v. Nicolls*, 5 N. Ca. 508; *Russell v. Smyth*, 9 M. & W. 810.

PETITION.

No order will be made in this court on a petition not correctly entitled in the matter of the act of parliament under which it is presented. *French, in re*, 8 Ir. Eq. Rep. 96.

TENANTRY ACT.

The local equity of which the Tenantry Act is declaratory, does not extend to covenants by tenants to tenants.

A lease for lives contained a covenant to take renewals; the landlord did not enforce it against the tenants in possession when the *ceux qui vient* died, and several years after the premises were assigned to the defendant, much deteriorated; the landlord's agent took a part in the assignment, had the conveyance altered, and engaged in a treaty for granting a new lease at a reduced rent to the defendant, under circumstances which might lead her to believe a renewal would not be enforced, and which the court disapproved of, though there was nothing at all fraudulent intended. *Held*, that the circumstances were sufficient to deprive the landlord of his right to a specific performance of the covenant. *Alder v. Ward*, 8 Ir. Eq. Rep. 350.

THEATRE.

By the 26 G. 3, c. 57, s. 1, the crown was authorized to grant letters patent for establishing and keeping a theatre in Dublin; and by sect. 2, it was enacted, that no person should for hire act any play in any theatre in Dublin, except in such theatre as should be so established by letters patent, under the penalty of forfeiting 300*l.* for every such offence, to be sued for by the common informer.

Under this statute the crown granted letters patent to *H.*, authorizing him, during a certain term, to keep a theatre in Dublin; and his Majesty prohibited and forbid all persons whatsoever, during the term, that they presume to keep open in any manner any theatre in Dublin, and therein to act any play, unless they should be thereunto authorised by his Majesty. *Held*, that the patentee could not maintain a bill for an injunction to restrain unauthorised persons acting plays in a theatre in Dublin, for the keeping of which no patent had been granted. Such a bill can only be maintained upon the ground of interest in the plaintiff; and unless he can sustain an action in the case, the injunction cannot be supported. *Calcraft v. West*, 2 D. & L. 123, S. C., 8 Ir. Eq. Rep. 74.

TITHE ACT.

Receiver.—The court has a discretion to grant or withhold a receiver under the 1 & 2 Vict. c. 108, s. 30 (Tithe Rent-charge Act); therefore, though a *prima facie* title be stated

in the petition, if a fair doubt be cast on it by the answering affidavit, the court will not appoint a receiver.

Semble, A certificate by the commissioners under the Tithe Composition Act, 4 G. 4, c. 99, s. 25, is valid, though it only finds generally that tithes are payable to a lay impropriator, without giving his name.

Semble, also, The title to the tithes is not concluded by the certificate. *Greville v. Fleming*, 8 Ir. Eq. Rep. 201.

TRUSTEE ACT.

1. *Charity*.—Devise, in 1677, to the use of the poor of the parish of A. The Master was unable to ascertain in whom the estate was vested. *Held*, that the case was not within the Trustee Acts.

So, also, where charity money had, in 1745, been laid out by a parish in the purchase of an estate for the poor of the parish, and it could not be ascertained in whom it was vested. *Attorney-General v. Randles*, 8 Beav. 185.

2. *Debts payable out of real estate*.—A petition, under the 1 W. 4, c. 60, stated, that in 1823, the testator devised real estates to a trustee to pay debts; and after payment thereof, in trust for the petitioner; that he died in 1824, and thereupon the petitioner entered; that, many years ago, petitioner and the trustee sold part of the estate, and paid all the debts; that the trustee had died, and that his heir was a minor; and it prayed a conveyance of the legal estate. The court directed inquiries whether the minor was a trustee for the petitioner alone, discharged of debts and the trusts of the will. *Barry, in re*, 2 J. & L. 1.

3. *Marriage settlement*.—*New trustee*.—The 1 W. 4, c. 60, was not intended to sanction a trustee resigning his trust rather than do an act which he deems improper.

A trustee in a marriage settlement refused to join in lending the trust monies, because he disapproved of the security. The wife, pursuant to a power for the purpose, removed him and appointed a new trustee in his place; and the husband and wife then presented a petition under the act to compel the old trustee to transfer the funds to the new trustee. The court refused the application. *Pepper v. Tuckey*, 2 J. & L. 95.

USURY.

1. *Bond and mortgage*.—A. executed a bond and mortgage to B. to secure 2,000*l.* lent to him by B., with interest at 5*l.* per cent.

B. having sold out a sum of stock to enable her to make the loan, the dividends of which exceeded the interest of the 2,000*l.* at 5*l.* per cent., A. afterwards agreed, in consideration of her letting the 2,000*l.* continued secured at interest as aforesaid, to transfer to her, when requested so to do, the amount of the stock sold out, or, at her option, to pay to her a sum of money sufficient to repurchase it, and, in the meantime, to pay to her the amount of the dividends of it, instead of the interest of the 2,000*l.*

Held, that the agreement was additional to,

and not substitutional for, the bond and mortgage, and was therefore various. *Powney v. Blomberg*, 14 Sim. 179.

2. *Annuity*.—*Quere*, Whether an annuity for a term of years certain, which will within the term repay the purchase money, and more than legal interest on it, is usurious?

The cases on this question reviewed and commented upon. *Kenny v. Lynch*, 8 Ir. Eq. Rep. 207.

Cases cited in the judgment: *Doe d. Chambers*, 4 Camp. 1; *Doe d. Gouch*, 3 B. & Al. 664; *Bulwer v. Astley*, 1 Phil. 422; *Spurrier v. Mayoss*, 1 Ves. jun. 527, 529; *Rex v. Drury*, 2 Lev. 7; *Fereday v. Wightwick*, 1 Russ. & M. 50; *Ferguson v. Sprung*, 1 A. & E. 567; *Chillingworth v. Chillingworth*, 8 Sim. 404; *McCormick v. Ferrier*, 11ay & Jo. 12.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Davis v. Chanter. Dec. 2nd, 1846.

APPEAL.

An appeal will lie from an order for the cause to stand over to enable the plaintiff to amend his bill by adding parties.

THIS was an appeal from the Vice-Chancellor of England.

Mr. Stuart and Mr. Bagshawe for some of the defendants, objected that the plaintiff could not appeal from an indulgence of the court, which they contended was the effect of the Vice-Chancellor's order that the cause should stand over with liberty for the plaintiff to amend his bill by adding parties, and to bring on the cause again, if so advised. *Beresford v. Adair*, 2 Cox, 156, cited in *Osbourne v. Fallows*, 1 Russ. & Myl. 741; and in reply, Mr. Stuart mentioned the case of *Morgan v. Howitt*, decided by Lord Chancellor Brougham.

Mr. Cooper, on the other hand, contended that the case of *Beresford v. Adair* might be considered as having been decided by the consent of the parties, and he relied upon the cases of *Lumsden v. Fraser*, 1 Myl. & Cr. 589; *Led-biter v. Long*, 4 Myl. & Cr. 286.

The Lord Chancellor did not consider the case of *Beresford v. Adair*, although of long standing, an authority, as it was contrary to his lordship's experience of the practice. *Osbourn v. Fallows* was decided in direct contradiction to it. A decision that the court below will not proceed until a certain act shall be done is as much a subject for review in this court as any other order. The plaintiff has a right to appeal.

Joynsen v. Moseley. Dec. 4th, 1846.

PROOF VIVA VOCE.

Proof of a deed vivâ voce not allowed after the death of the attesting witness.

In this case Vice-Chancellor Wigram had dismissed the bill with costs, but without prejudice to the filing of another. The plaintiff, however, preferred bringing the matter before the Chancellor by way of a rehearing.

Mr. Temple and Mr. Lovat, for the defendant, took the preliminary objection that a certain deed, under which the plaintiff claimed an interest, had not been proved. They submitted, that it could not be proved *in rem*, as the attesting witness was dead; consequently the record was imperfect. It was also stated that there were many other objections to the claim set up by the plaintiff.

Mr. Bacon, with whom was Mr. Rogers, tendered the affidavit of a person present at the execution of the instrument, who deposed to the handwriting of, and the signing by, the attesting witness, and also to his death, but

The Lord Chancellor intimated that he did not see how he could assist the plaintiff if the defendant persisted in his opposition, particularly as it was stated that further objections existed.

Application refused with costs.

Coombs v. Warwick. Dec. 15 and 16, 1846.

NEW ORDERS.—MASTERS' JURISDICTION.—AMENDMENT OF BILL.

Under the general orders of May, 1845, relating to amendments of bills, application must, in the first instance, be made to the Master; consequently there can only be one appeal from his decision; and if such appeal be made to one of the Vice-Chancellors, there can be no further appeal to the Lord Chancellor.

In this case the Master had refused leave to amend the bill under the 67th of the New Orders, and a subsequent application for that purpose had also been refused by the Vice-Chancellor of England. From the later decision the plaintiff now appealed.

Mr. Cooper, for the appeal, stated, that this question involved the decision of Lord Lyndhurst in the case of *Christ's Hospital v. Grainger*, 1 Phillips, (31 L. O. 317.) which he contended was contrary to the policy of the court as laid down in various cases, viz., *Smith v. Webster*, 3 Myl. & C. 244; *Carr v. Appleyard*, 2 Myl. & C. 476; *Lloyd v. Wait*, 4 Myl. & C. 257; *Strickland v. Strickland*, 4 Beav. 146, and the cases there cited; and the learned counsel endeavoured to show from an elaborate comparison of the new orders with those which they had abrogated, that the conclusion of the late Chancellor was not warranted by the language of the existing orders. These had been compiled under the authority of the acts passed in the 4th and in the 4th & 5th Vict., wherein no allusion was made to the 3 & 4 W. 4, c. 94, on the construction of which (sects. 13 and 14) *Christ's Hospital v. Grainger* was decided.

Mr. Miller also contended, that the jurisdiction of the court would not have been taken

away inferentially by an act of parliament, and that in fact it had only delegated part of its jurisdiction to the Masters, and he cited *Rees v. Edwards*, 1 Keen, 466. Mr. Miller's argument was not pressed, that the hearing before the Vice-Chancellor was an original hearing, and not by way of appeal from the Master.

Mr. Spence (with whom was Mr. Stinton) relied upon *Christ's Hospital v. Grainger*, and the absence in the new orders of the negative words, which were contained in the amended orders of April, 1828.

The Lord Chancellor, without hearing Mr. Stinton, or calling for a reply from Mr. Cooper, (who admitted the non-existence of those negative words,) said, that the case lay in a very narrow compass, and did not come within the principle of *Lloyd v. Wait*. When the latter case was decided an ambiguity existed, and his lordship had decided as he thought most expedient for the suitors. The new orders had not limited the time within which these applications might be made to the Master. The present motion therefore could not be entertained.

Kolls Court.

Lord Suffield v. Bond. November 25, and December 14.

MASTER IN ROTATION.—17TH ORDER OF 1833.

The certificate appointing the master in rotation under the 17th Order of 1833, during vacation, ought to be filed in the records and writs office after having been produced to the vacation master as acting for the master in rotation.

The omission thus to file the certificate will not justify a future application in the cause to any other master than the master therein named.

THE facts and arguments in this case will be found to be fully stated in the judgment.

Mr. Toller, for the motion.

Mr. Dickinson, contra.

Lord Langdale said,—This was a motion to take a report, finding the answer of the defendant Bond insufficient, off the file for irregularity. The bill was an injunction bill, and the common injunction had been obtained for want of answer. On the 15th September, an order was obtained for time to answer by consent. For the purpose of obtaining this order, the usual certificate was obtained, naming the master in rotation. At the time when this was done, Master Farrer was master in rotation. Master Richards was the vacation master, and Sir W. Horne was sitting for him. The certificate naming the master in vacation was taken to Sir W. Horne, by whom it was filled up, by inserting the name of Master Farrer as the master in rotation. It was then filed in the public office, but it was not returned to the records and writs office to be there filed according to the direction of the 17th Order of Dec., 1833. It is said, that the defendant could not

do this, because the order requires the certificate to be produced to the master in rotation before it is filed in the records and writs office, and that this could not be done in the absence of the master. But I find that it is the practice, both of the masters and of the records and writs office, to consider the sitting master in vacation as acting for the master in rotation in this matter, and therefore, that the order ought to have been produced to the sitting master in vacation after it had been filed in the public office, and then carried to the records and writs office, when it could have been filed, in the same way as if it had been produced before the master in rotation. The order for further time was served upon the plaintiff's solicitor, but no notice appears to have been given of the master appointed in the cause.

When the answer came in, exceptions were taken to it for insufficiency. The solicitor for the plaintiff must have known that an order had been obtained for time to answer; but forgetting this, he acted as if no such order had been made, and obtained certificate, by which Sir G. Rose was named as the master in rotation. Now, it is true, that from the practice in the public offices as to the certificates for appointing the master in rotation, the plaintiff might by inquiry at that office have found that a master had been appointed in the cause. But he would not have done so had he made inquiry where the order directs inquiry to be made, at the records and writs office. The solicitor for the defendants was well aware of the mistake which had been made, but he seems to have preferred relying upon the irregularity of the proceedings on the other side rather than on the sufficiency of the answer. In consequence, the proceedings before Sir G. Rose were carried on in his absence. When the report had been obtained, notice was given of a motion to take it off the file for irregularity. The plaintiff's solicitor applied for information as to the nature of the irregularity, and was told that he would know in due time. I think that the order under which the report was obtained from Sir G. Rose was irregular, and that therefore the defendant ought not to be bound by the report. But the defendant has also been irregular, and therefore he is not entitled to have the injunction dissolved. As to the order which should be made, I have had some doubt. I consider, indeed, that the court has authority to prevent parties from converting its rules into a source of injustice, and therefore, that notwithstanding the irregularity, I might have left Sir G. Rose's certificate on the file; but considering that it might be unjust towards the defendant to preclude him from the opportunity of supporting his answer, the order which I shall make will be, that the certificate of insufficiency be taken off the file, and a report as to the insufficiency of the answer obtained from Master Farrer within four days, or that the injunction be dissolved. I give no costs on either side.

Vice-Chancellor of England.

Clarke v. Mayor, &c., of Derby. November 25, 1846.

NEGLIGENCE OF SOLICITOR. — AMENDING BILL.

A bill will not be allowed to be amended after great delay, on the ground that the delay was owing to the negligence of the solicitor, and the plaintiff had, in consequence, changed his solicitor.

THIS was a motion for leave to amend the bill, although it was admitted that due diligence could not be shown according to the requisitions of the 67th and 68th Orders of 1845. The bill had been filed on the 5th of February last, and the answer put in on the 7th of May. The ground of the application was, that the negligence was entirely that of the solicitor, in spite of the repeated efforts of the plaintiffs to arouse him to greater activity; but that the plaintiffs had now changed their solicitor, and their present solicitor was prosecuting the cause with activity. Application had been made to the Master, who, however, considered himself bound by the 67th and 68th order; but this, under the 21st Order, the court was not.

Mr. Stuart and Mr. Toll for the motion.

Mr. Bethell, Mr. Parker, and Mr. Shadwell were on the other side, but without calling upon them,

His Honour said, that he considered the negligence of the solicitor was the negligence of the plaintiffs; they should have come sooner to remove him, and he could not relieve them from the effect of their own conduct.

Motion refused.

Queen's Bench.

(Before the Four Judges.)

The Queen v. Harrison and others. Michaelmas Term, 1846.

MANDAMUS.—INSPECTION OF APPOINTMENT OF OVERSEERS.

The court will not grant a mandamus for a ratepayer of a township to inspect the appointment of overseers of the poor of that township.

A RULE nisi for a writ of mandamus had been obtained, commanding the overseers of Kirby-Lonsdale to permit one Tennant, a ratepayer of the township, to inspect the document by which they were appointed overseers. At a meeting of magistrates, when three were present, four persons were appointed overseers for Kirby-Lonsdale for the ensuing year. The appointment was signed by two out of the three magistrates who were present. Tennant afterwards went to the magistrates and asked them who made the order, and they referred him to the overseers, who had possession of the appointment. Tennant then applied to the overseers, who refused to show him their appointment. It was alleged as ground of objection, that one of the overseers was not a person duly qualified according to the statute 43 Eliz.

Mr. Godson and Mr. Ramshay now showed cause. The facts disclosed on these affidavits are not sufficient to justify the court in granting this application. The application is to inspect the legality and sufficiency of the appointment of overseers, but the court will not interfere by way of mandamus when the question may be decided by appeal or by applying for a certiorari to bring up the appointment. This is not like the case of *Rex v. The Justices of Leicester*, where the court granted a mandamus to justices to permit a ratepayer to inspect a county rate, because there the rate was considered in the nature of a public document. There has, in fact, been an appeal against this appointment.

Mr. Pashley in support of the rule. Assuming that there has been an appeal against this appointment by some one, yet that fact will not prevent the court granting this application, and only shows that there is a *bond fide* intention to dispute it. There are difficulties in this case in applying for a certiorari, because before it is granted the court requires a statement on oath of the nature of the objection, and that cannot be ascertained till the instrument has been inspected. The facts alleged in the affidavits disclose a clear legal right on the part of this applicant to have this rule granted. The court has recognised the general principle in numerous cases. He cited *Rex v. Great Farringdon*,^b *Regina v. The South Holland Drainage*,^c *Fox v. Jones*,^d *Rex v. Shelley*.^e

Lord Denman, C. J. This is a very unreasonable application. There is no authority for it, and on that ground I am of opinion that the rule ought to be discharged with costs.

Mr. Justice Coleridge. I am of the same opinion. I much regret that I granted the rule. The only ground for the application is, that A. G., one of the overseers for this township, ought not to be appointed because he is not a householder and is not a substantial person. These are grounds for an appeal. An appeal has been entered since this rule was obtained; and on the hearing the appeal the party will not be restricted to a mere question of form, but may bring into discussion both the matters which are now sought to be submitted to adjudication here. This was in fact an application to avoid an appeal, and there is no justification for it in point of precedent.

Wightman, J., concurred.

Rule discharged, with costs.

Queen's Bench Practice Court.

Payne v. Shenstone, administratrix. Michaelmas Term, 1846.

PLEA PUIS DARREIN CONTINUANCE. — PRACTICE IN PLEADING.

A plea puis darrien continuance, if pleaded during the sitting at which the cause is set down for trial, should be pleaded on the day

of trial in court, and be delivered to the judge to be certified by him and be annexed to the record, and should not be merely delivered to the plaintiff's attorney as an ordinary plea; and where such a plea was delivered to the plaintiff's attorney at the sittings for which the cause was set down for trial, and the plaintiff took no notice of it, but proceeded to try the cause upon the issue already joined, and obtained a verdict, (the defendant not appearing,) the court held that he was right in so doing, and refused to set aside the trial.

On a former day Needham obtained a rule to set aside the verdict and all subsequent proceedings in this cause. This action was brought by the plaintiff against the defendant as administratrix of James Templar Shenstone, upon a bond debt, to which she pleaded *plene administravit*, whereupon issue was joined, and the case was set down for trial at the first sitting in this term, to be held on the 3rd of November. On that day the defendant delivered to the plaintiff's attorney a plea *puis darrien continuance* to the further maintenance of the action of a judgment recovered by other parties, to which plea was annexed the proper affidavit. The plaintiff, however, took no notice of this plea, but proceeded on the 4th of November to try his action upon the issue raised upon *plene administravit*, and obtained a verdict, the defendant not appearing. This rule was therefore obtained on the ground that it was not competent to the plaintiff, under the circumstances, to try his action upon the old issue, the plea *puis darrien continuance* being an abandonment of the former pleading of the defendant.

Petersdorff and *Fitzherbert* now showed cause. The plaintiff was right in disregarding the plea *puis darrien continuance*, which was irregularly pleaded. It was in fact pleaded as though it were in banc, whereas the sitting at *nisi prius* having commenced, the plea should have been delivered in court, and have been certified by the judge and transcribed upon the record. The rule of court, Hilary Term, 4 W. 4, r. 2, which will be relied upon by the other side, does not alter the practice when the plea is pleaded at *nisi prius*. The old practice was this:—if the plea was pleaded in banc, that is, not when the court was sitting at *nisi prius*, the plea was filed, but if pleaded when the sitting or assizes had commenced, then it was pleaded at *nisi prius*, and delivered to the judge in court. Here it was pleaded on the day of the sitting at *nisi prius*, and should not have been delivered to the opposite attorney as though it had been pleaded in banc.

Needham contra. This question turns entirely upon the proper construction to be put upon the two rules of court, the one the rule Hilary Term, 4 W. 4, r. 1, which directs that "no demurrer nor any pleading subsequent to declaration shall in any case be filed with any officer of the court, but the same shall always be delivered between the parties," and the other the rule Hilary Term, 4 W. 4, r. 2, s. 2, which

^b 9 Barn. & Cres. 541. ^c 8 Adol. & El. 429.

^d 7 Barn. & Cres. 732. ^e 3 Term R. 141.

provides that "in all cases in which a plea *puis darrien continuance* is now by law pleadable in banc or at *nisi prius*, the same defence may be pleaded, with an allegation that the matter arose after the last pleading or issuing of the jury process, as the case may be; provided also, that no such plea shall be allowed, unless accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of such plea, or unless the court or a judge shall otherwise order." Now the first of these rules clearly shows that this plea is to be delivered as other pleas are now delivered, namely, "between the parties." There is no exception, and a plea *puis darrien continuance* being "a pleading subsequent to declaration," it falls within the rule laid down, and was therefore properly delivered. It was the duty of the plaintiff's attorney to have annexed the plea to the record, and he was wrong in passing it over and trying upon the old issue. It is certainly more convenient in practice that the plea should be thus delivered, as by this course being adopted the plaintiff is restrained from preparing for a useless trial, as the cause must stand over upon such a plea being pleaded (*Todd v. Emly*, 9 M. & W. 606; *Prince v. Nicholson*, 5 Taunt. 333); and indeed if it cannot be so delivered, and the defendant is bound to plead it on the day of trial, he may be altogether deprived of its benefit, as he might be thereby unable, from the cause not being tried till late in the sitting and after the eight days have expired, to make his affidavit that the subject matter of the plea arose within that number of days before the day of pleading. The practice, as laid down in Chitty's Archbold, is in conformity with the course pursued in this instance, and the cases of *Powell v. Duncun*, 5 Dowl. 550; *Dunn v. Hill*, 11 M. & W. 470; and *Wollen v. Smith*, 9 A. & E. 505; seem to recognize it.

Patteson, J. Before the new rules the practice was to plead such a plea in banc, if before the sitting day, and file it; but if at the sittings, then to deliver it in court to the proper officer, and have it certified by the judge and annexed to the record. These rules have, however, abolished the filing of pleas, and instead of their being filed they are to be delivered between the attorneys, and it is argued that they are to be so delivered in all cases; but it is clear that the rule applies to cases only in which the old practice was to file the plea; but such a plea as this was only filed when it was pleaded in banc; for if the sittings at which the cause was to be tried had commenced, it was not filed, but was delivered in court. Now it should be shown that if the new rules had not existed and this plea had been filed, it would have been correct; but it is clear it would not have been so, and that it must have been pleaded and delivered at *nisi prius*. There is no alteration in the practice where the plea is pleaded at *nisi prius*; nor is there any difficulty as to the not being enabled to make the affidavit of the subject matter having arisen within eight days of the time of pleading; for

it may be that the plea can be pleaded before the actual day of trial, though not handed in until then; but, at all events, the rule itself provides for such a contingency by the words, "unless the court or a judge shall otherwise order." Inasmuch, therefore, as this plea was delivered between the attorneys as though pleaded in banc after the sitting at *nisi prius* had commenced, instead of being pleaded and delivered in court, I think it was irregular, and that the plaintiff was right in disregarding it. The rule must be discharged.

Rule discharged.

Common Pleas.

Thorne and another v. Jackson. Michaelmas Term, Nov. 17, 1846.

MIDDLESEX COUNTY COURT.—SUGGESTION ON THE ROLL.—SUFFICIENCY OF AFFIDAVIT.

In an affidavit in support of an application to enter a suggestion on the roll to deprive a plaintiff of costs, under a local courts act, the statement of the defendant's residence and liability to be summoned, and the particular court, must be positive and sufficient in themselves.

Where, therefore, under the Middlesex Court of Requests Act, 23 G. 3, c. 33, the defendant having first described himself in his affidavit as of "No. 51, Bedford Row, Holborn, in the county of Middlesex," afterwards stated that he resided at the commencement of the action in "Bedford Row aforesaid," and was then "liable to be summoned to the court of requests held at Kingsgate Street, Holborn, aforesaid." The court held that the affidavit was not sufficient under the provisions of the 19th section of that act.

A RULE had been obtained in this case to enter a suggestion on the roll to deprive the plaintiff of costs under the Middlesex Court of Requests Act, 23 Geo. 2, c. 33. The affidavit of the defendant, on which the rule was obtained, described him as of "No. 51, Bedford Row, Holborn, in the county of Middlesex, Tailor," and afterwards stated that "before and at the time of the commencement of this action he (the defendant) was, and ever since hath been, and still is, inhabiting and resident in Bedford Row, aforesaid, and that for and during the whole time he hath been and still is liable to be summoned to the court of requests held at Kingsgate Street, Holborn, aforesaid." The form of the jurat was "sworn in court the 5th day of November, 1846, before," and then followed the signature of Mr. Justice Williams.

B. C. Robinson showed cause, and having first unsuccessfully objected to the omission of the word "me" in the jurat as an irregularity, proceeded to show, that the affidavit was defective on another ground. By the 17th sect. of the 23 Geo. 2, c. 33, the defendant, in order to avail himself of the act, is required to be resident in Middlesex at the time of the commencement of the suit, and be liable to be

summoned to the court of requests. Here the affidavit does not show positively that the defendant was at the time of the commencement of the suit resident in Middlesex. The commencement of the affidavit stating the defendant to be of No. 51, Bedford Row, Holborn, in the county of Middlesex, was mere description, upon which no perjury could be assigned, and the words "Bedford Row, aforesaid," afterwards used, did not necessarily import that the latter was in Middlesex and not in London. There was also nothing in the affidavit to show, that the court holden in Kingsgate Street, Holborn, to which the defendant was liable to be summoned, was the court of requests in the county of Middlesex, as required by the latter part of the above enactment.

Charnock, in support of the rule. The number of the defendant's house is given, and stated to be in Middlesex, and the words "Bedford Row, aforesaid," sufficiently include that statement. Then the affidavit goes further, and states the liability of the defendant to be summoned to the court of requests, Kingsgate Street, Holborn, aforesaid. Besides, if any part of Bedford Row, or the court in Kingsgate Street, be not in Middlesex, that ought to be shown by the other side.

Wilde, C. J. It is for the party who comes to say that the plaintiff is not entitled to costs, to show sufficient ground in his own affidavit, and here it appears to me, that the affidavit is not sufficient. Although at the time of making the affidavit, the defendant resided at No. 51, Bedford Row, Holborn, in the county of Middlesex, yet it is quite consistent, that at the time of the commencement of the action he might have resided in a part of Bedford Row, which is in London. In the next place, the defendant fails in showing that he was liable to the jurisdiction of the particular court at the time of the commencement of the action. He only says, that he was liable to be summoned to the court of requests held at Kingsgate Street, Holborn, aforesaid, and the court cannot take judicial notice of that being the county court of Middlesex. The rule therefore must be discharged.

Rule discharged.

Exchequer.

Phillips v. Gibbs. Michaelmas Term, Nov. 20, 1846.

ATTESTATION OF COGNOVIT.

A cognovit was attested as follows:—"Duly executed by me the above-named R. G. in the presence of me the undersigned S. B., attorney, on behalf of the said R. G., expressly named by him and attending at his request; and I do hereby declare that I subscribe my name as witness to the due execution hereof by the said R. G., and as his attorney, and that previous to the execution hereof by the said R. G., I informed him of the nature and effect hereof." Held,

that it contained a sufficient declaration, that the party was attorney for the person executing.

In this case the defendant had given a cognovit, the attestation of which was as follows:—

"Duly executed by the above-named Robert Gibbs, in the presence of me the undersigned Samuel Balden, attorney, on behalf of the said Robert Gibbs, expressly named by him and attending at his request; and I do hereby declare that I subscribe my name as witness to the due execution hereof by the said Robert Gibbs and as his attorney, and that previous to the execution hereof by the said Robert Gibbs I informed him of the nature and effect hereof.

"Samuel Bolden, Attorney, Birmingham."

A rule nisi had been obtained to set aside the judgment and execution, on the ground that the attestation was not according to the form required by the 1 & 2 Vict. c. 110, s. 9, which enacts that no warrant of attorney or cognovit shall be of any force, "unless there be present some attorney of one of the superior courts on behalf of such person expressly named by him and attending at his request to inform him of the nature and effect of such warrant or cognovit before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney."

Keating showed cause, and argued, that upon a fair construction of the whole attestation, it sufficiently appeared that the witness declared himself to be attorney for the defendant, and he referred to 2 Chit. Arch. 687.

Prentice, in support of the rule, cited *Elkington v. Holland*, 9 M. & W. 659; *Hibbert v. Barton*, 10 ib. 678.

Pollock, C. B. An express declaration that the party attesting is the attorney of the defendant, may be found within this attestation.

Parke, B. In the first part of the attestation there is a declaration of the party being attorney for the defendant.

Alderson, B. I am satisfied that the attestation is perfectly regular.

The court afterwards went into the merits, and set aside the judgment on terms.

LAW APPOINTMENTS.

The Queen has been pleased to appoint William à Beckett and Roger Therry, Esquires, to be Puisne Judges of the Supreme Court of the colony of New South Wales; and Alfred Cheeke, Esq., to be Commissioner of the Court of Requests. Nov. 27.

Her Majesty has also been pleased to appoint William George Knox, Esq., to be Puisne Judge for the island of Trinidad. Nov. 27.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 26, 1846.

———"Quod magis ad nos
Pertinet, et noscire malum est, agitamus."

HORAT.

RAILWAY LITIGATION.

THE NISI PRIUS SITTINGS.

"THE work goes bravely on." The number of causes set down for trial at the sittings after Michaelmas Term, which have just concluded, has been unusually large in all the courts,* and of these causes a very considerable proportion has arisen out of railway transactions. It would seem as if the passion for this description of litigation was stimulated, rather than satisfied, by the decisions that have already taken place, "as if increase of appetite had grown by what it fed on." Doubtless, many of the parties to actions speculated upon the admitted uncertainty of the law, and notwithstanding the repeated warning and advice given on this subject, it is to be feared that some persons of ordinary sagacity and intelligence have attached too much weight to expressions which fell casually from the judges sitting at *nisi prius*, and which have not been always accurately reported. The *nisi prius* decisions of the ablest judges, when reported by the most competent persons, should be received with a liberal allowance for the haste, misapprehension, and inevitable imperfection of judgments formed and pronounced at the moment, without deliberation or the opportunity of consulting authorities. These observations apply *a fortiori*

to railway cases, in which a judge was called upon to determine on the sudden what legal principle should govern his direction to the jury with reference to a novel and complicated state of facts.

Almost every number of the daily newspapers during the last month, furnishes a report of some case in which views have been ascribed to the learned judge who presided, which, however just in their application to the particular circumstances under consideration, would afford a very unsafe guide if applied to cases bearing a general resemblance, but not precisely similar. One very eminent judge (Mr. Justice Cresswell) is reported, in a case tried before him, to have expressly adopted the opinions propounded by the Court of Exchequer, in the now famous judgment of that court, in the cases of *Reynell v. Lewis* and *Wylde v. Hopkins*, and to have informed the jury, that the fact of a defendant's having assented to become a member of a provisional committee furnished no evidence of liability deserving of consideration. On the other hand, it is said, that the noble and learned lord who presides in the Court of Queen's Bench expressed an opinion at *nisi prius*,^b somewhat at variance with the judgment pronounced by the Court of Exchequer, and intimated, that it was a fair question for the consideration of a jury, what was meant and implied when a man gave his sanction to a railway project, and consented that his name should be published to the world as a provisional committee-man. The suggestions of superlative good sense sometimes resemble wit,—they furnish remarkable in-

* At the commencement of the Guildhall Sittings, there stood for trial:—In the Court of Exchequer, 205 causes,—in the Queen's Bench, 169 causes,—and in the Common Pleas, 130 causes, making an aggregate of 504 causes for trial in London alone; independent of the entry of causes for trial in Middlesex.

^b In a case of *Alley v. Gain*, tried on the 7th Dec. last.

stances of what every one has thought, but none before so well expressed. The case to which we have last adverted suggests the observation and illustrates it. Much of the argument, in many of the cases affecting the liability of provisional committee-men, proceeded upon the consideration of the question, on whom did the plaintiff rely when he furnished the goods, or performed the services, for which he afterwards sought to recover against a provisional committee-man? Lord *Denman*, in the case referred to, disposes of this inquiry, by the obvious remark, that "very probably the party looked to no one in particular, but to the vast body of persons who were held out as promoters of the scheme, which was the more likely considering the public excitement at the time, and that every one who entered a committee-room expected to leave it a richer man." So, with respect to the absence of intention, so often pressed as an argument in favour of provisional committee-men, who, it was said, could never have meant to make themselves liable for preliminary expenses by merely assenting to the publication of their names; Lord *Denman* meets it by the forcible observation, that although it was very possible the parties sought to be charged in those actions might not have calculated upon the result, or conceived they would ever have been called upon to pay the demands now made upon them; still they might, in their anxiety to join speculations of this nature, have done that which would render them in point of law responsible to others. Any notice of the reported *nisi prius* decisions in railway cases would be incomplete if we omitted to allude to two points suggested, as we understand, by the Lord Chief Baron in railway cases tried before him. His lordship is reported in one case to have ruled, that no promoter of a company could be sued for goods supplied or services rendered on behalf of the company, unless the requirements of the Joint Stock Company's Registration Act (7 & 8 Vict. c. 110,) as regards provisional registration, had been previously complied with; and in another case, that no person falling within the statutory description of "a promoter," could recover under any

circumstances for goods supplied or services performed, in any action against any of those who were co-promoters—or in other words—who were engaged in common with the plaintiff in forming and establishing the company. The numerous instances in which the provisional registration of proposed railway companies is notoriously defective in some of the particulars required by the 4th section of the statute, and the extended application given to the word "promoter," independently of the weight that attaches to anything that falls judicially from the chief of the Court of Exchequer, entitles the views announced by the learned judge in those cases to the gravest consideration. At the same time, as already observed, they are to be received *sub modo*, and not as actual decisions upon which, as yet, any one could safely advise or act.

Turning from the subject of railway actions, we may be expected to advert to an occurrence of an unusual character at the *nisi prius* sittings at the close of the last week, which, as might be supposed, has been the topic of much observation and discussion in professional circles. The simple facts appear to be, that an action for breach of promise of marriage was set down for a second trial at the Guildhall sittings; the defendant having obtained a rule from the Court of Exchequer, to set aside a verdict taken against him upon the first trial, with 300*l.* damages; and before the case was called on or the jury sworn, the Lord Chief Baron intimated a strong opinion, that the case ought not to be tried again, and if tried, that it would be highly inexpedient to examine witnesses for the defence; upon which Mr. Cockburn, the learned counsel who appeared for the defendant, complained that the public expression of such an opinion by the learned judge who was about to try the cause, was calculated to prevent the defence he was instructed to lay before the jury from obtaining an unbiassed consideration at their hands, and upon this ground he ultimately withdrew from the court, leaving the case to be tried as undefended. There was a verdict for the plaintiff, with 400*l.* damages. As it is understood that the matter will be brought under the consideration of the Court of Exchequer sitting in banco during the first four days of Hilary Term, we

* By the construction clause, (sect. 3,) a promoter is thus defined:—"The expression *promoter* or *promoter of a company*, to apply to every person acting by whatever name in the forming and establishing a company at any

period prior to the company obtaining a certificate of complete registration as herein-after mentioned."

should not act consistently with the spirit and principles which have uniformly influenced the conduct of this publication, if we endeavoured to anticipate the discussion which must then take place. We shall now only express our unqualified confidence in the independency as well as the integrity of the judges of the Court of Exchequer, from which we derive the abundant assurance, that in disposing of a question of this personal nature they will not be unmindful, there is no appeal from their decision to any other tribunal but that of public opinion!

NOTES ON EQUITY.

REVOCATION OF WILL.—PENCIL ALTERATIONS.

THERE is no doubt that if a will were written wholly in pencil and duly attested, it would be valid; but if written in the more permanent material of ink and subsequently altered in pencil, it seems that such alterations will be of no avail of themselves, unless it could be shown by satisfactory evidence that such alterations were intended by the testator as a revocation. Thus, the drawing a line in pencil through some words does not cancel them. *Martins v. Gardiner*, 8 Sim. 73. Such alteration is held to be only deliberative and indicative of some future intention. *Doe d. Perkes v. Perkes*, 3 B. & A. 489; *Hawkes v. Hawkes*, 1 Hagg. 321; and *Winsor v. Pratt*, 5 Moore, 484. In a recent case before Vice-Chancellor Wigram,* it appeared that a testator, after giving an annuity of 200*l.* to his mother, proceeded as follows:—"I give and bequeath unto Margaret Evans, now living servant with me, an annuity of 20*l.*, to be payable during her life;" but a line was drawn in pencil through these words. The annuitant filed a bill, stating that the personal estate of the testator had been fully administered, and praying a decree for payment of the arrears of annuity out of the real estates held by the defendant as devisee under the will. The Vice-Chancellor sent the case to a court of law, and the jury, under the directions of Mr. Justice Erle, found that the annuity was not revoked by the pencil alteration. A motion was then made for a new trial, on the ground,—not so much that the verdict was against the evidence, but—that the judge had given a

misdirection to the jury. His Honour said, the alleged omission was in not directing the jury that, *primâ facie*, the pencil erasure was a revocation, and that they were bound therefore to find the bequest revoked, unless evidence was given to countervail that act. The judge certainly did not tell the jury that the pencil erasure was a revocation, but only that the act was equivocal, and that they were to decide from the collateral facts and the nature of the alteration, which was in pencil instead of the more durable material, ink, what effect was to be given to it; and the judge observed very properly that the testator had taken pains to have the will formally drawn up, and had afterwards made pencil alterations. "Omitting the case of *Mence v. Mence*, 18 Ves. 318." (his Honour said,) "it appears to me that in the cases of *Parkin v. Bainbridge*, 3 Phillimore, 321; *Ravenscroft v. Hunter*, 2 Hagg. 88; *Lavender v. Adams*, 1 Add. 403; *Edwards v. Astly*, 1 Hagg. 490; and *Hawkes v. Hawkes*, 1 Hagg. 321, the judges have all considered that a pencil alteration may be final, or that it may be deliberative; and that, from the nature of the act, they consider it, *primâ facie*, as deliberative, and not final. That view has always been taken in the Ecclesiastical Courts, admitting that any circumstances appearing upon the face of the will, or facts appearing by extrinsic evidence, must be taken into account in deciding the question. It is impossible not to feel the force of what the learned judges have said. Every man who makes an alteration in ink supposes that alteration to remain, for the material cannot, without much labour, be got rid of; but with respect to alterations in pencil, the probability is that they have been made as notes for the purpose of altering the instrument, to be changed as the testator thinks fit. The act is deliberative, and I cannot say that the learned judge did not do right when he so stated the law of the case, and left it to the jury to consider the effect of the alteration. He clearly defined the question intended to be referred to them, and left it to the jury as distinctly as it could be left. In that view, therefore, of the case, I do not see any ground to alter their conclusion. I do not understand Sir William Grant, in *Mence v. Mence*, as meaning to lay down any abstract rule. In that case there was a residuary clause, and a pencil line drawn through the residuary clause so far as it related to the disposition of the property,

* *Francis v. Grover*, 5 Hare, 39.

but the words 'and as to all my ready money, securities for money,' &c., which were descriptive of the property, were left standing. Against the residuary clause in the margin the testator had written, 'This is to be particularly noted,' giving as a reason for the erasure, that he meant to make a different disposition of some portraits and other specific articles. Then, in the residuary clause there were some directions given as to advances for his natural sons and a nephew, and opposite to that the testator had written in the margin, 'This should be modified.' Sir W. Grant, having the erasure and the notes in the margin before him, came to the conclusion that the testator did intend to revoke the residuary bequest; that he intended to revoke it so far as the disposing part went; and that he had intended also not to leave the other part standing against which he had written that it was 'to be modified.' I cannot understand Sir W. Grant as intending by this decision to lay down any abstract rule of law different from that which has been recognised by other judges. In this case I am of opinion that the learned judge did not miscarry in point of law in not directing the jury that they were bound to assume a revocation, unless the contrary was proved. The jury were directed to consider the nature of the act done,—the course the testator had taken in executing a formal instrument; and all the surrounding facts which were brought to their attention; and the judge was satisfied with the verdict. I see no ground for directing a new trial."

NOTICES OF NEW BOOKS.

Practical Rules for determining Parties to Actions, Digested and Arranged, with Cases. By HERBERT BROOM, of the Middle Temple, Esq., Barrister-at-Law. Second edition. London: Maxwell & Son. 1846. Pp. xl. 333.

MR. BROOM, the author of an excellent "Selection of Legal Maxims," has just published a second edition of his *Treatise on Parties to Actions*. The numerous cases which have been decided since his first edition have rendered a new one indispensable. It appears that more than 400 new cases have been incorporated into the present edition.

The first part treats of plaintiffs in actions *ex contractu*, under the following heads:—

1. General rules; 2. Landlord and tenant—Principal and agent—Partners—Corporations—Companies; 3. Husband and wife—Infant—Alien—Civil death; 4. Bankruptcy and Insolvency—Executors and administrators.

The second part comprises defendants in actions *ex contractu*.

1. General rules; 2. Landlord and tenant—Principal and agent—Partners—Corporations—Companies; 3. Husband and wife—Infant—Non compos mentis, &c.; 4. Bankruptcy and Insolvency—Executors and administrators.

The third part relates to plaintiffs in actions *ex delicto*.

1. General rules; 2. Landlord and tenant—Principal and agent—Master and servant; 3. Husband and wife—Infant—Alien—Civil death; 4. Bankruptcy and Insolvency—Executors and administrators.

The fourth part treats of defendants in actions *ex delicto*.

1. General rules; 2. Landlord and tenant—Principal and agent—Master and servant; 3. Husband and wife—Infant, &c.; 4. Bankruptcy and insolvency—Executors and administrators.

The Appendix contains

1. Remarks as to the common law liabilities of members of railway companies; 2. Recent statutes as to joint stock companies; 3. Joint stock banks, (7 & 8 Vict. c. 113); 4. Aliens, (7 & 8 Vict. c. 66); 5. Recovery of small debts, (9 & 10 Vict. c. 95.)

From the Appendix we shall extract Mr. Broom's remarks on the *Common Law Liability of Members of Railway Companies*:—

"The ordinary rules which have been already laid down, with reference to the liabilities of Principal and Agent, will, it is believed, be found applicable in determining the respective liabilities of parties engaging as members of Railway Companies. Now the stat. 7 & 8 Vict. c. 110, s. 4, provides that a company shall be entitled to a certificate of provisional registration when the proposed name of the intended company, the business and purpose of the company, and the names, occupations, places of business, and residence of its promoters have been registered, and we shall therefore consider the existence of the company as commencing with its provisional registration, merely observing, that in some instances a certificate of provisional registration is obtained by the promoters, before any steps have been taken towards the formation of the committee, or managing body, and before any expenses have in fact been incurred, whereas, in other cases, parties have previously agreed to co-operate in the undertaking, as members of the provisional or managing body. No prospectus nor advertisement can however be issued before

a certificate of provisional registration has been obtained, and the liability of parties who may have entered into contracts prior thereto will depend in all respects upon the principles which have been already laid down as applicable to ordinary contracts. Assuming, then, that the company has obtained its certificate under the above-mentioned statute, we shall proceed to consider the liability which attaches to a member of the managing body. I. When the provisional is identical with the managing committee. II. When the managing committee is elected or appointed by the provincial committee. III. When the provisional and managing committees, although co-existent, are independent of each other. It is believed that every case which can occur in practice will be found to fall within one or other of the above three classes.

"I. In the case first supposed it is evident that the managing body must be either altogether self-constituted or must be called into existence by persons proposing at some future period, i.e., as soon as shares shall be issued, to become shareholders in the company, and with respect to the liability of such parties, the remarks in a case^a already cited seem directly applicable: "when persons meet to prepare the measures necessary for calling the society into existence, attendance on such meeting and concurrence in such measures may be strong evidence that any individual there present and taking part in the proceedings held himself out as a paymaster to all who executed their orders; if, therefore, expenses are incurred by the committee prior to the issue of shares in the undertaking, and in pursuance of resolutions passed at the preliminary meeting of persons interested in the prosecution of the undertaking, it seems clear that persons attending at such meeting, and assenting to such resolutions, will be liable for the expenses so incurred.

"It will, in the next place, be convenient to remark that the managing body of a railway company is by no means on the footing of an ordinary trading co-partnership: its position seems to be much more analogous to that of the committee of a club; and the distinction between these two is obvious, for where persons engage in a community of profit and as partners, one partner has the right of property for the whole, and may, in ordinary transactions, bind the partnership by his act; but a tradesman who has supplied goods to a club 'cannot recover against a member of the committee, unless he shews that the person making the contract was the agent of the defendant, and by him authorized to enter into the contract on his behalf';^b that is to say, in the latter case the agency must be proved, whereas, in the former, it is implied by law.

It is clear that in order to fix the member of the committee of a railway company with liability for goods supplied to the committee some proof must be given that the party sought to be charged either concurred in giving the order, or has recognised and assented to it when given. Before any allotment of shares has been made, and before, consequently, any capital has been raised for meeting expenses incident to the preliminary operations, a member of the acting committee must indeed be presumed to have authorized that body to pledge his individual credit for goods to be supplied for their use, and for other reasonable and necessary expenses; but even in this case the question as to liability is one of fact, and not of law, and it will be for the jury to infer from the defendant's conduct whether he did not give authority to some one to pledge his credit for such things as might be necessary for carrying on the concern". Where, however, a subscription has been entered into for liquidating the preliminary expenses, or when funds have been raised in the usual manner, by issuing shares in the undertaking, it is clear that the inference to be drawn by the jury will be the reverse of that just mentioned; for, as observed by Alderson, B., in a recent case,^d 'if A. gives money to B. to do a certain act, the natural inference is that B. is to spend the money, and not pledge A.'s credit; but if A. gives B. authority to do something, but gives no money for the purpose, then he may pledge the credit of his principal for what is necessary.'^e Inasmuch, then, as the liability of a member of the managing body of a railway company depends upon the proof of agency in every case when the contract in question was not made by him in person, it seems, on principle, that he would not be bound by the act of the majority of the committee, provided he expressly dissented therefrom, in which case neither actual nor implied authority for such act from the dissentient member could of course be shewn. 'It might be,' remarks the learned Baron^f whose words we have already quoted, 'that the majority only gave authority, and that the defendants dissented from it. If so, I should think they only were liable, who voted for it.' Such a case, however, is, we believe, in general, and certainly ought to be, provided for, either by the resolutions adopted by the committee for its internal management, or by the express terms of the subscribers' agreement; and in the absence of any such provision, it will at all events be necessary for the member sought to be charged in respect of a contract entered into by order of the committee, to show that he was one of the minority who dissented from giving the order. Mere absence, however, of the defendant from the committee, on any particular occasion, would

^a *Lake v. The Duke of Argyll*, 6 Q. B. 478, 479.

^b See the judgments of Lord Abinger, C. B., and Parke, B., in *Fleming v. Hector*, 2 M. & W. 172.

See *Bartlett v. Lambert*, 10 Jur. 416.

^d *Bartlett v. Lambert*, supra.

^e See *Fleming v. Hector*, 2 M. & W. 172.

^f *Todd v. Emly*, 8. M & W. 508, and *Bartlett v. Lambert*, 10 Jur. 417.

seem to imply *assent* rather than *dissent*, and would not, it is conceived, raise any presumption favourable to him. The power, moreover, of the majority of the committee to bind the minority, and of present to bind absent members, by any particular act or contract done or entered into by them, will depend upon its quality and nature. For instance, if a bill of exchange were accepted by several members of the committee acting as such, in pursuance of a formal resolution, and with a view to raising money for the purposes of the company, it is apprehended that those members only would be liable whose names were on the bill, or who had expressly authorized its acceptance.^a Where scrip has been issued, and the subscribers' agreement has consequently been signed, the powers entrusted to the directors will be ascertained by reference to that deed, and we need only observe that these powers, which are in general sufficiently ample, must be strictly pursued. The authority of the committee is necessarily limited to such acts as may be within the contemplation of the clauses of that deed by which the affairs of the company are regulated. When they act in violation of those rules they exceed the authority which is delegated to them, and their acts are void, and cannot be binding on any member of the committee who has not expressly assented to them.^b It is quite clear that when a party becomes a member of the committee of a railway company he will not be liable for goods supplied, or on any contract entered into prior to the period of his joining the concern, unless, indeed, he use the goods or ratify the contract, in which case he would, according to the ordinary rule that *ratihabitio retrocrahitur*, be responsible.^c

"II. In cases where the managing committee is selected by the provisional committee out of its own body, and invested with general powers for carrying out the objects of the company, the liability or non-liability of a member of the provisional committee who has assented to this delegation of authority will depend upon whether the act done, and on which he is sought to be charged, was or was not within the general scope of the authority thus delegated. This question will, in most cases, be for the jury; and the difficulty which may be felt in answering it will be found to result from the fact that the powers delegated to the acting body are usually very ill-defined. It seems, however, that the remarks already made as to the liability of a member of the managing committee for the acts of his co-directors will in general apply when a question arises as to the liability

of a member of the provisional committee for the acts of that body to which he has himself agreed to entrust the management of the concern. And since cases falling strictly within the class to which we have here adverted are certainly of rare occurrence, we shall proceed, thirdly, to offer some remarks with reference to cases in which the provisional and managing committees are co-existent but independent of each other.

"III. The principal difficulty here consists in determining whether the strict rule applicable to the case of an *ostensible* partner in a trading firm applies also to that of a provisional committee-man who has simply allowed his name to appear as such to the world, but who has not in any way interfered in the management of the company. The rule as to the liability of an ostensible or nominal partner in a trading concern has been already stated, and may be illustrated by the case of *Guidon v. Robson*.¹ There, a merchant carrying on trade on his own separate account introduced into his firm the name of a clerk who did not partake in the profits of the business, but continued to receive a fixed salary. And Lord Ellenborough, C. J., ruled that the nominal partner was to be considered in all respects as a partner between himself and the rest of the world, and that, where the name of the real person is introduced with his own consent, it is immaterial what agreement there may be between him and those who share the profit and loss. 'They are,' observed his lordship, 'equally responsible, and the contract of one is the contract of all.'² Now, this decision depends upon a principle which is altogether inapplicable to the case of a railway undertaking, viz., that one partner is an agent for his co-partners for trading purposes, and the case cited merely shows that the same principle must be applied where a person who is not really a partner holds himself out to the world as such. We have already stated our belief that the individual members of the managing committee of a railway company are not, *by implication of law*, agents for each other, or for the entire body; but that *some* proof must be given of express or implied authority to them to act as such. It must be observed, moreover, that the test usually applied for determining whether or not a trading partnership exists, *quoad* third persons, viz., the participation of the parties in the profits of the concern,³ is manifestly inapplicable in the case of a railway company. To such a company we ap-

¹ 2 Camp. 302, per *Eyre*, C. J., *Waugh v. Carver*, 2 H. Bl. 246.

² Unless, perhaps, where it can be shown that the plaintiff was not aware that the party had held himself out as a partner, and had not, consequently, given him credit. See per *Tindal*, C. J., *Holcroft v. Hoggins*, L. J., N. S., C. P. 129.

³ *Potts v. Eytton*, C. P. Trin. Term, May 22, 1846.

^a See per Lord *Abinger*, C. B., 2 M. & W. 179.

^b See per *Coltman*, J., with reference to a benefit society. *Tyrrell v. Woolley*, 2 Scott, N. R. 181, per Lord *Abinger*, C. B., 2 M. & W. 179, 180.

^c *Bartlett v. Lambert*, 10 Jur. 415. See *Kerridge v. Hesse*, 9 C. & P. 200.

prehend that the law of principal and agent, and not that which regulates ordinary partnerships, must be applied; and we therefore conclude that a provisional committee-man, who has merely allowed his name to appear as such in the prospectus and advertisements of a railway company, will not, as a matter of legal inference, be liable for the acts of the managing committee, unless he has either taken part in their appointment, or has in some way interfered with, or acquiesced in, their proceedings. The law was thus laid down by Parke, B., in a case of *Law v. Wilson*, recently tried before him; and the ruling of this learned judge was approved of by Pollock, C. B., in the subsequent case of *Banks v. Goode*, at the Nisi Prius sittings after last Trinity term.^o It likewise seems to have been followed in several other Nisi Prius cases, which have not yet appeared in the regular reports.

"We may further remark, that if there be (as we have already suggested) any analogy between the respective positions of the committee of a club, and of a railway company, the judgments in *Todd v. Emly*, and *Fleming v. Hector*, which certainly deserve, with reference to this subject, an attentive perusal, may be called in aid of the conclusion, which we have submitted to the reader. The proper questions then for the jury in an action against a provisional committee-man will substantially be: First, whether the defendant authorized the insertion of his name in the list of the provisional committee; and secondly, whether he authorized the managing committee, or their agents, to pledge his credit for the debts of the concern. If the first of these questions should be answered in the affirmative, but no evidence be given to show a delegation of authority by the defendant ultra the fact of his consent to be a member of the provisional committee, the second of the above questions will, it is conceived, become one of law merely, and the verdict will have to be entered for the defendant; unless, indeed, where the plaintiff relies upon the terms of the prospectus, as showing a delegation of authority by the provisional committee as a body, in which case this document will, under the circumstances supposed, receive its true construction from the court: and if its construction should be such as that contended for by the plaintiff, the verdict will of course be entered for him.^p

"As regards the *shareholders*, it seems quite clear that they are not partners in the concern *quoad* the public; they merely contribute towards raising certain funds for liquidating the

expenses incidental to the undertaking, and certainly cannot be considered as expressly or impliedly authorizing the managing directors to pledge their credit for any purpose whatsoever. Where, however, the terms of the prospectus have been complied with as regards the allotment of shares and the subscription of the necessary capital, and the conditions precedent to the formation of the company have consequently been fulfilled, it cannot be doubted that a partnership exists as between all parties embarking as shareholders in the concern.^r The application for shares, however, and payment of the deposit will amount to nothing 'if the shares subscribed for are so few that the concern cannot proceed, and the scheme must necessarily be abortive;' and in this case, according to a recent and well-known decision, the amount of the deposit may be recovered back: "providing there be evidence to show that the scheme has in fact been abandoned." Even where the subscribers' agreement has been executed it will, according to the case of *Wontner v. Shairp*,^u be a question for the jury in an action for recovery of the deposit, whether the deed was executed by the plaintiff with the same understanding as the money was paid, or whether he was induced to execute it by any misrepresentation as to the actual position of the concern.

We shall conclude these remarks with referring the reader to the case of *Day v. Sharp*, already noticed,^v where it was held, that an action would lie at suit of the secretary of a railway company, who had previously been a member of the provisional committee of the company against the defendant, being likewise a member of the same committee, there being evidence to show that the defendant had assented to the change in the plaintiff's position; and had agreed that he should cease to hold the character of committee-man, and should assume that of secretary: this decision appears to have proceeded on the ground that the defendant was by his own acts estopped from setting up the partnership as a defence to the action. It was expressly decided in *Lucas v. Beach*,^w that one shareholder may maintain an action against another shareholder in an undertaking in respect of a contract entered into prior to the existence of the partnership *inter se*; and this decision is quite in accordance with established principles.^x

^r *Holmes v. Higgins*, 1 B. & C. 74, recognised *Lucas v. Beach*, 1 Scott, N. R. 350.

^s *Walstab v. Spottiswoode*, 15 L. J., N. S., Ex., 193, 198; *Pitchford v. Davis*, 5 M. & W. 2; *Nockells v. Crosby*, 4 B. & C. 814.

^t *Smith v. Newcomb*, cor. *Patteson*, J., at Lincoln Midsummer Assizes, 1846.

^u Cor. *Erle*, J., June 23, 1846.

^v But see *Holmes v. Higgins*, 1 B. & C. 74.

^w 1 Scott, N. R. 350.

^o See *Barker v. Birt*, 10 M. & W. 61.

^p The above remarks have been confined to that point which appears to us to be of the most practical importance, with reference to the liability of provisional committee-men. It will of course be remembered that the provisions of the deed of settlement may in any particular case have a very material bearing upon the question of liability.

CANDIDATES PASSED AT THE EXAMINATION.

Michaelmas Term, 1846.

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &c.</i>
Aikman, John Robertson	Charles Pearson, Guildhall
Armitage, James	James Crossland Fenton, Huddersfield;—John Stevenson, 3, King's Road, Bedford Row
Ayre, John, jun.	William Powell Hartley, Bristol;—Francis George Sherrard, Bristol
Baker, Frederick	James Blythe Simpson, Derby
Beck, John Grant	Charles Pestell Harris, Cambridge
Bell, Richard	John Thorney, Kingston-upon-Hull
Bishop, Robert	John Sargent, Liskeard
Boddington, George Lester	William Boycot, jun., Kidderminster
Boykett, Thomas Hebbert	Edward Smith, 5, Chancery Lane
Brabner, Samuel Peeling	Samuel Brabner, Liverpool;—Edward Chester, Staple Inn
Bremridge, Thomas Julius	Henry Melhuish Ford, Exeter;—John Mitchell, Wymondham and Exeter
Brooks, Thomas	Francis Jessopp, Derby
Bruce, William	Richard Ecroyd Payne, Leeds
Brumell, Francis	George Brumell, Morpeth;—John Stevenson, 3, King's Road
Canning, Walter	William Fellowes, jun., Dudley
Cartmale, John	Edward Wyatt, Lichfield and Whittington;—Thomas Hodson, Lichfield
Clarke, Robert, jun.	Robert Clarke, Bath;—Edward King, Bath
Cole, George Henry	John Platt, 5, Church Court, Clement's Lane
Coleridge, Francis James	Francis George Coleridge, Ottery, St. Mary
Cooper, Charles Sidney	Thomas Cooper, Lewes;—William Durrant Cooper, Lewes
Croft, John	Frederick Smith, 3, Basinghall Street
Crosse, John Macartney	Adam Taylor, jun., Norwich;—John Bayly Ransom, Stow-market;—John Wickham Flower, 61, Bread Street
Crossman, William	Thomas Gilchrist, Berwick-upon-Tweed
Dain, Horatio	William Leake, Devonshire Street, Portland Place
Dart, Philip Francis	William Hughes Brabant, Savile Place
Davies, James	Thomas Evans, Hereford;—Charles Gwillim Jones, 11, Gray's Inn Square
Deere, John Morgan	Alfred Southby Crowdy, Swindon;—William Henry Smith, 12, Bedford Row
Dimsdale, Frederick	William Borrodaile, 20, King's Arms Yard
Duignan, William Henry	George Bradnock Stubbs, Walsall
Dobinson, Henry	William Dobinson, Carlisle
Dowson, John	William Pringle, 3, King's Road, Bedford Row
Duffy, Richard	George Rawson, Nottingham;—Charles Butlin, Nottingham
Fiske, Edward Brown	Robert Fiske, Beccles;—Randall Ellis Burroughes, Norwich
Ford, Henry	John Geare, jun., Exeter;—J. Elliott Fox, 40, Finsbury Circus
Foster, Lambert Blackwell, jun.	Clement William Unthank, Norwich
Fowler, James	George Paulson Wragge, Birmingham
Gabriel, Samuel Hawkes	Nicholas Lockyer, Plymouth
Gates, Christopher Hill	George Kewney, Grantham
Gordon, William Pierson	Thomas Harley Kough, Shrewsbury;—Edmund Boyle Church, 38, Southampton Buildings
Greenhalgh, James	James Cross, Bolton-le-Moors
Gundry, Frederick Walter	John Hull Terrell, Exeter
Gunn, John Thaddeus	Robert James, Glastonbury;—Charles Fletcher Skirrow, 1, Bedford Row
Haddock, Thomas	William Rowson, Prescott
Harvey, John William Henry	Edward Dyne, 61, Lincoln's Inn Fields
Heather, James	William Charles Monkton, Bartlett's Buildings;—Francis Horace Moger, 17, Paternoster Row
Hewson, Frederick	Bryan Holme, New Inn;—John James, Wroughton
Hibbit, Henry	Joseph Hockley, Guildford
Hodgson, Charles Bernard	Thomas Houghton Hodgson, Carlisle
How, Thomas Maynard	William Wybergh How, Shrewsbury;—Alfred Bell, 59, Lincoln's Inn Fields

James, Philip Frederick . . .	Francis Lewis Bodenharn, Hereford
Knighton, John . . .	James Dolman, Clifford's Inn
Knuckey, Francis Burdett . .	George Selby, 6, St. John Street Road
Lingard, Richard Boughey . .	Roger Rowson Lingard, Heaton Norris ;—Thomas Holme
Monk . . .	Bower, 46, Chancery Lane
Lloyd, Cornelius . . .	Edward Lloyd Powell, Abergavenny
Long, Giles . . .	William Long, 47, Nelson Square, and 9, Bouverie Street
Lord, Charles Frewen . . .	Benjamin Edward Willoughby, 13, Clifford's Inn
Lucas, Charles Frederick . .	Henry Lucas, Newport Pagnell
Mallam, Charles . . .	Thomas Mallam, jun., Oxford
Malleson, John Nisbitt . . .	George Ogle, 4, Great Winchester Street ;—George Frederick
	Prince Sutton, 6, Basinghall Street
Marston, Richard . . .	William Urwick, Ludlow
Maud, Edward . . .	John Shackleton, Leeds
Maule, Edward . . .	George Frederick Maule, Huntingdon ;—William Henry Trin-
	der, 1, John Street, Bedford Row
Mitchell, William Hope . . .	William Devereux, Portsmouth
Moore, Robert Bendle . . .	Robert Bendle, Carlisle ;—Robert Toulmin, Staple Inn ;—Jas.
	Mounsey, Carlisle
Morgan, Isaac . . .	John Trevillian Jenkin, Swansea
Northover, Richard . . .	John Henry Todd, Winchester
Oliver, James . . .	Septimus Davidson, Weavers' Hall
Palmer, Cadwallader Edwards, .	Joseph Francis Kingdon, Barnstaple ; Cadwallader Edwards
jun . . .	Palmer, sen., Barnstaple
Parker, Henry, jun. . .	Henry Parker, 3, Raymond Buildings
Patrick, Charles . . .	Robert Aiskell Davison, Bishop Wearmouth
Payne, Edward Turner . . .	Henry Hayman, Bath
Penfold, William John . . .	T. Attree ; Somers Clarke ; and J. Sidney M'Whinnie, Brighton
Phillips, Joseph, jun. . .	Richard Newcomb Thompson, Stamford
Phillips, William . . .	William Sowton, Chichester
Poole, Herbert Henry . . .	Thomas Hacker Body, 20, Tokenhouse Yard ;—Thomas Po-
	cock, 58, Bartholomew Close
Powell, Frederick . . .	Samuel Powell, jun., Knaresborough ;—Chas. Lever, 10, King's
	Road, Bedford Row
Powell, James, jun. . .	James Powell, Chichester
Price, Clement Uvedale . . .	John Blanchard, York ;—William Richardson, York
Robinson, Henry . . .	Francis Pearson, Kirkby Lonsdale
Rowcliffe, Edward Lee . . .	Charles Rowcliffe, Stogumber
Sanderson, John . . .	John Sanders, Liverpool ;—John Shaw Leigh, Liverpool
Sewell, Henry . . .	John Whitelock, 70, Aldermanbury
Shaw, Richard, jun . . .	Richard Shaw, sen., and Robert Artindale, Burnley
Shelly, William Parker . . .	John Clarke Chaplin, Birmingham
Sheppard, Shearman . . .	Charles Shearman, 2, Gray's Inn Square ;—George Capes,
	1, Field Court, Gray's Inn
Simonds, Francis, . . .	Alexander Meek, Devizes
Simpson, Reuben . . .	John Goodeve, 1, Raymond Buildings
Smith, George Archer . . .	William Newton, East Retford
Smithson, William . . .	Oswald Smithson, York
Somerville, Stafford Baxter . .	Edmund Baxter, Doncaster
Spraggett, George . . .	Thomas Samuel Wright and Robert Frederick Welchman,
	Southam and Leamington Priors
Steedman, Charles Tudor . . .	Charles Richards, Llangollen
Thompson, Richard . . .	Albert Smith, Sheffield
Thorn, Simeon . . .	John Hamilton, Berners Street, Oxford Street ;—Thomas
	Francis Justice, Berners Street
Till, George John . . .	John Drummond, Croydon
Tribe, Henry . . .	William Tribe, Worthing ;—Thomas Loftus, New Inn.
Voss, Robert . . .	Henry Philipps, Sise Lane
Walker, Edward . . .	James Taylor Margitson, Bungay
Welford, Edward Davison . . .	Edward Welford, Hexham
Wells, Algernon . . .	Edward Daniell, Colchester
White, Charles Edward . . .	Edward White, Great Marlborough Street
Willmott, Frederick . . .	Richard Carpenter Smith, 27, Bridge Street, Southwark ;—
	Josiah Wilkinson, Nicholas Lane, Lombard Street
Wills, William Ridout . . .	William Wills, Birmingham
Wilmot, William Bendry . . .	William Wilmot, Chippenham
Wing, William, jun. . .	Charles Margetts, Huntingdon
Wratislaw, Charles Edward . .	William Ferdinand Wratislaw, Rugby

OPERATION OF THE POOR REMOVAL ACT.

RELIEF OF IRREMOVABLE POOR.

It having been alleged that relief has been either wholly refused or inadequately supplied by boards of guardians to poor persons who, through the operation of the late statute relating to the removal of the poor, have now become *irremovable from parishes in which they were resident, though settled elsewhere*; the commissioners have issued a circular to boards of guardians, from which we make the following extract:—

"The commissioners desire to impress upon the guardians that a long course of authorities, consisting of legal decisions and the opinions of the ablest text writers upon the subject, has established the rule, that the poor are to be relieved, as their necessities require, in and by the parish where they are resident.

"Indeed, the proposition that the poor who happen to be destitute in any particular place are not to be relieved there by the officers who have the administration of the relief, until it is ascertained that they are settled there, or are casual poor, or that some other parish is under a legal liability to repay the relief, is so contrary to all established principles upon the subject, that the commissioners have only thus adverted to it because they are informed that such a doctrine has recently been circulated, and may have influenced some of the boards of guardians in their course of action.

"The commissioners have already, in their circular letter of the 20th of October last, pointed out, that no difference ought to be made in the treatment of the two classes of paupers settled, and paupers simply irremovable, with reference to the nature, quantity, or quality of relief administered to them.

"The commissioners admit, indeed, that the cases of the non-settled poor may, for the most part, require to be carefully considered by the boards of guardians, who, by the operation of this statute, are called upon to relieve them, because it may be found that the relief heretofore supplied by a distant authority has been inapplicable, either in kind or quantity, to the party requiring it, or that the case has not been sufficiently investigated.

"If, therefore, the guardians direct a careful inquiry to be made into the circumstances of the parties and the actual necessities of the cases with a view simply of satisfying themselves as to the proper relief to be administered, and on receiving the result of such inquiry proceed to administer the relief as they would do under similar circumstances in respect to a settled pauper in their union, no objection can be made to their proceedings. But if any difference be made for the purpose of compelling the paupers, now irremovable, to seek relief in other parishes, it is clear that the course will be generally adopted by unions and parishes as a matter of self-defence, and that great suffering and hardship to the poor must ensue.

"There can be no doubt that such a course

of proceeding is at variance with the spirit of the recent statute, which assumes that the irremovable poor, so long as their residence remains unchanged, will be relieved in the same manner, and on the same terms, as the settled poor.

"And the guardians are requested to point out to the relieving officers the effect of these observations, and to warn them that the commissioners will consider any neglect of the poor who may be resident within their respective districts, although not settled therein, equally culpable with the neglect of the settled poor, and will not hesitate to treat any refusal of relief to the irremovable poor, on the ground of their settlement elsewhere, as a gross violation of their duty.

"The commissioners advert to one other point, namely, the continuance of non-resident relief. In the observations which they have made in their circular letter of the 17th September last upon this subject, they have not advised the guardians to discontinue the relief in cases where the non-resident paupers are removable. They desire it to be understood that they by no means recommend an indiscriminate withdrawal of such relief. They believe that the board of guardians may find it desirable, in many cases in which the statute does not apply, to continue that relief, and the commissioners do not consider that it would be unlawful for them to adopt this course, although it may not be advisable now to allow it for the first time even in cases where it would not be unlawful."

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF PROPERTY AND CONVEYANCING.

APPOINTMENT.

1. The mere fact, that a party, having a power by deed to revoke and make a new appointment of trust funds, has attempted to make such revocation and new appointment by will, owing to her having forgotten the restrictions of the power, and being at the time unable to procure the deed,—is not a ground upon which equity will supply the formal execution required by the terms of the power, or give to the will the effect of a deed, or convert the trustees of the property into trustees for the person who would be appointee, if the will were a good execution of the power. *Buckell v. Blenkhorn*, 5 Hare, 131.

2. Lands were limited to a father for life, with a power of appointment amongst his children; and in default of appointment, to the children as tenants in common in fee. The father and his eldest son (there being several children) joined in a fine and recovery of the estate; and being advised that the consequence of their act was to vest the fee in the father alone, he, by lease and release, conveyed the

lands to a purchaser, and received the entire amount of the consideration-money for his own benefit; the son being present at the transaction, and assenting to the conveyance.

The interest which the son had in the lands, at the time of the conveyance, but not that which he subsequently acquired, is bound by his assent to the conveyance to the purchaser.

If a father, having a power to appoint to a child, without making an actual appointment, concur with the child in making a settlement, which cannot have effect unless through a previous appointment, that very disposition is considered, 1st, as an appointment to the child, and then as a settlement by the child of the property appointed: but if the intention of the parties be, not to execute the power of appointment, but to operate on the estate in default of appointment, and if the transaction considered as an appointment, would be a fraud on the power, the court will not imply an appointment, none such having been actually made. *Thompson v. Simpson*, 3 J. & L. 110.

And see 8 Ir. Eq. Rep. 55.

3. C. having power to appoint a money fund to all and every or any child or children of hers, and to the exclusion of any one or more of them, in such shares and payable at such times as she should appoint, and in default of appointment, to be equally divided between them, by her will, appointed different sums to several of her children, and reciting that her daughter M. had declared her intention of becoming a nun, and had retired into a convent preparatory thereto, she declared that she deemed her patrimony in that case sufficient for her maintenance; but in case M. should change her mind and return to her family and friends, she bequeathed 1,000*l.* to trustees, in trust for M., to receive the interest of the same during her life, and at her decease to be divided amongst her children, if any; or in either case of her not leaving the convent or not leaving any issue, the 1,000*l.* to be divided amongst her three daughters therein named; and she bequeathed to her said three daughters any residue of the fund that might be after paying the several legacies in her will mentioned: *Held*, 1st, that the power authorized an appointment to take effect upon the happening of a contingency; 2ndly, that the interest which should accrue on the 1,000*l.* while the contingency was undetermined, passed under the residuary bequest in the will. *Caulfield v. Maguire*, 2 J. & L. 142.

4. The execution of a power to appoint a jointure and portions for children by deed, supported in equity though executed by will.

By marriage articles, a provision was made for the intended wife and the children of the marriage, and a power was given to the husband to appoint a jointure for any wife or wives he might marry, and in the like manner to appoint portions for younger children: *Held*, that the power to appoint jointure and portions was confined to the children of a second or subsequent marriage. *Mills v. Mills*, 8 Ir. Eq. Rep. 192.

5. Mortgage.—Underhand agreement.—A father having a power of appointment among his children, appointed a larger portion of the property to one son, and by deed bearing date shortly after the son mortgaged it. Both deeds were prepared by the mortgagee's solicitor, but were both attested by the family solicitor of the father and son. The mortgage and receipt endorsed treated the money as paid to the son; but the father, who had a legal estate, was a party to the mortgage, and the mortgagee wrote a letter of the same date to the father, promising not to call in the money for three years. Both father and son joined in a collateral bond. The draft mortgage furnished to the family solicitor differed in date from that executed. An underhand agreement was alleged, but not proved, to have been made by the mortgagee's solicitor, against whom the bill was dismissed by consent. There was not proof that the father received the money, except a transfer to his credit at a banker's, a considerable time after he became a bankrupt some years subsequently. In a suit to impeach the transaction as a fraud on the power and unfair: *Held*, that although the transaction was suspicious, it must be supported in favour of the mortgagee. *Hamilton v. Kirwan*, 8 Ir. Eq. Rep. 278.

6. By a marriage settlement, reciting that the lady was entitled to an annuity charged on the estate of her son by a former marriage, and that the rents were inadequate to meet it, the lady assigned the annuity and the arrears and future payments thereof on trust, to receive so much as the rents would answer for the benefit of herself and husband, and to hold the arrears then due and thereafter to become due, in consequence of the rents being insufficient to answer the same, on trust, if her son should attain 21, &c., in her lifetime, to release them, but if he should die before her under age, &c., that the arrears due and to become due, should form a fund subject to the appointment of the wife; and it was declared in the mean time, and until the said arrears should become either absolutely vested in the son or subject to the wife's appointment, the trustees should not require payment of them. The son attained 21, and the rents afterwards became sufficient to pay the annuity and leave a surplus: *Held*, that though the case was not directly within the deed, the arrears were not raiseable as against a mortgagee of the son.

The conveyance under the former English Insolvent Act to the provisional assignee, is within the General Registry Act, nor is the registration of it dispensed with by the registration of the conveyance by the provisional to the creditor's assignee. *Battersby v. Rochfort*, 8 Ir. Eq. Rep. 284.

Case cited in the judgment: *Warburton v. Irie*, 6 Bl. 1; S. C. S. D. & Cl. 480.

See *Husband and Wife*, 4; *Power*.

AUCTION.

Puffing.—At the sale of an estate by public auction, one of the conditions being, that the

highest bidder should be the purchaser; a person attended who had no intention of being a purchaser, but was employed by the vendor to bid, in order to prevent the property from being sold at an under-value; and this person made several biddings, till he reached the sum of 650*l.*, when he ceased to bid. The property was afterwards purchased for 690*l.* Upon the purchaser objecting to perform his contract, on the ground that puffers had been employed at the sale, the court decreed special performance, the purchaser declining to have the validity of the contract tried in a court of law.

Quære, whether the declarations of an auctioneer at a sale, to the effect that there were no puffers, are receivable in evidence, unless the expressions used are put in issue by the pleadings. *Woodward v. Miller*, 2 Coll. 279.

See notes on this case, p. 26, *ante*.

CHOSE IN ACTION.

See *Husband and Wife*.

CURTESY.

See *Tenant for Life*.

DEED.

1. *Construction*.—The words “during their joint and natural lives,” in a settlement, *held*, to mean: “during their joint lives and the life of each of them.” *Smith v. Oakes*, 14 Sim. 122.

2. *Construction*.—*Ultimate limitation*.—In 1773, *A.* married *B.*, who was seised in fee of estates in Denbighshire. By their marriage articles they covenanted, that *M.* and *N.* should stand seised of *B.*'s estate, (which were mentioned by their names,) to the use of *A.* and *B.* for their lives and the life of the longer liver of them, remainder to the use of their first and other sons in tail. *B.* had an estate in Denbighshire, called Plas Madoc, which was not mentioned in the articles. *A.* and *B.* had two sons. In 1802, they and their elder son, conveyed all their estates, including Plas Madoc, to a tenant to the præcipe, and afterwards suffered recoveries of them, for the purpose of barring all estates tail, reversions, and remainders in the estates, and resettling them to such uses as *A.* and *B.* and their eldest son should appoint, and in default to *A.* and *B.* for their lives, and the life of the longer liver of them, remainder to their uses as the elder son should appoint, and in default of such uses as the said estates were and stood limited to by the articles: *Held*, that the ultimate limitation is as wholly inoperative at law, and that it had no effect in equity, upon Plas Madoc, and that subject to the powers of life estates, there was a resulting use, as to it, for *B.* in fee. *Youde v. Jones*, 14 Sim. 131.

2. *Release*.—*Construction*.—*A.* and *B.*, his surety, executed a joint and several bond to *C.*, conditioned to be void on payment of 5,000*l.* by *A.*

C. proved the 5,000*l.* as a specialty debt, under the decree in a suit instituted by *A.*'s creditors after his death. Afterwards, *B.* paid the 5,000*l.*, and thereupon, *C.* executed to him

a general release of all claims and demands in respect of the bond, and by the same deed, covenanted to stand possessed of all the monies to be received under the proof, and of all the securities for the 5,000*l.*, in trust for *B.*, and to use his utmost endeavours to obtain payment of that sum for *B.*'s benefit.

Held, that the legal effect of the release was not controlled by the covenant, and that the Master, when he made his report in pursuance of the decree was justified in disallowing the 5,000*l.* as a specialty debt, and in allowing it merely as a simple contract debt to *B.* *Warwick v. Richardson*, 14 Sim. 281.

Cases cited in the judgment: *Fayler v. Homershaw*, 4 Mau. & Sel. 423; *Solly v. Forbes*, 2 Brod. & Bing. 38.

See *Infant*, 1.

DOWER.

Marriage articles containing a bare covenant, that if a husband should die in his wife's lifetime, without leaving issue, she should be entitled to one-half of whatever real or personal estate he should die seised or possessed of, and containing no provision in the event of his dying leaving issue: *Held*, from the general interest apparent on them, to bar the widow of her dower out of the remaining moiety of the husband's estate. *Hamilton v. Jackson*, 8 Ir. Eq. Rep. 195.

Cases cited in the judgment: *Vizard v. Longden*, 3 Atk. 8; *S. C.* 1 Ves. 55; *Wilcocks v. Wilcocks*, 2 Vern. 558.

FEE-FARM RENT.

Tenant in fee borrowed money; to secure the payment whereof, with interest, he confessed a judgment in double the amount, and put his creditor into the receipt of a fee-farm rent, which was equal in amount to the annual interest: and afterwards devised all his estates to *A.* for life; remainder to *B.* for life; remainder to the first and other sons of *B.* in tail. *A.* died in 1802; the full amount of the judgment being then due to the creditor, who had not been paid interest since 1786. *B.* died in 1824, never having received any part of the fee-farm rent; but his executors were paid 21½ years' arrears of the rent. *B.* having in 1824 paid off the judgments, and taken an assignment of it to a trustee for himself: *Held*, that his executors were not at liberty to retain, as against the remainder-man, the arrears of the fee-farm rent, received by them, and to leave the arrears of the interest a charge upon the estate; particularly as *B.*, in 1803 and 1821, became a party to family settlements, in which the estate was dealt with as if the fee-farm rent had been applied in payment of the interest, and benefits were given him by those settlements. *Caulfield v. Maguire*, 2 J. & L. 141.

Cases cited in the judgment: *Tracy v. Lady Hereford*, 2 H. C. 128; *Revel v. Watkinson*, 1 Ves. 93; *Lord Penrhyn v. Hughes*, 5 Ves. 99; *Bulwer v. Astley*, 1 Phil. 122.

ESTATE.

1. *Remainder expectant*.—In 1809, (at which

time *A.* was dead.) *B.* and her eldest son executed deeds and suffered recoveries, by which, (after reciting that the son had contracted for the purchase of *B.*'s life interest in the estates, except *Plas Madoc*, (which was mentioned to be, but was not, thereafter more particularly described,) to the uses after expressed; and they granted the estates to *E. J.* and his heirs, save and except to *B.*, during her life, out of the grant, the estate called *Plas Madoc*, to hold the premises thereby granted, (except as thereinbefore excepted,) to *E. J.* and his heirs, subject, as to *Plas Madoc*, to a mortgage thereon, to uses which were declared of all the estates, the last being for the elder son in fee. *Held*, at law, that he took an estate in fee in possession in *Plas Madoc*. *Held*, in equity, that he took, at the least, an estate in fee in remainder expectant on *B.*'s death in *Plas Madoc*. *Younge v. Jones*, 14 Sim. 131.

2. *Partial interest*.—Those who, with notice of title, deal with a person entitled to a partial interest in an estate, are responsible for any dealing with the property which professes to encumber and embarrass the estate of the other persons claiming under the same instrument. They are not at liberty to deal with the estate so as to embarrass the other persons claiming under the same instrument. *Nixon v. Robinson*, 2 J. & L. 4.

3. *Estate for life* by implication in real and personal estate. *Cockshott v. Cockshott*, 2 Coll. 432.

See *Tenant for Life*.

HUSBAND AND WIFE.

1. *Chose in action*.—*Construction*.—*Settlement*.—A married woman, an infant, having become entitled to 900*l.*, under the trusts of her mother's settlement, the trustees paid 400*l.*, part of it, to her husband, upon the understanding that he should settle the remaining 500*l.* for the benefit of his wife, in the manner after-mentioned. Accordingly the trustees paid the 500*l.* to *M.* and *N.*, the husband's nominees; and by a deed made between the husband and wife and *M.* and *N.*, it was declared that *M.* and *N.* should pay the income of the 500*l.* to the wife, for her separate use for life, and that after her death the principal should remain upon such trusts as she should appoint by will, and in default of appointment, in trust for her next of kin, according to the Statutes of Distribution. The wife survived her husband.

Held, that the settlement was binding on her; and that, under it, she was merely entitled to the income of the 500*l.* for her life, and not to the principal absolutely. *Hansen v. Miller*, 14 Sim. 22.

2. *Chose in action*.—A female infant, being entitled to the reversion of a chose in action, expectant on the decease of the survivor of *A.* and *B.*, she and her husband covenanted, in contemplation of their marriage, to assign it to trustees in trust, as to one moiety, for the husband absolutely, and as to the other moiety, for the wife and the issue of the marriage. The husband died first, and afterwards *A.* and *B.* died. *Held*, that the wife was entitled to

have the chose in action transferred to her. *Le Vasseur v. Scrutton*, 11 Sim. 116.

Case cited in the judgment: *Elwin v. William*, 13 Sim. 309.

3. *Separation*.—*Covenant*.—*Semble*, that a covenant before marriage that, in case of any separation taking place between the husband and wife, the husband shall make a certain provision for his wife, is void. *Cocksedge v. Cocksedge*, 14 Sim. 244.

4. *Post nuptial settlement*.—*Reduction of wife's chose in action into possession*.—*Wife's power of appointment*.—By a post nuptial settlement, reciting that a sum of stock, originally standing in the name of the wife, had been transferred into those of trustees, and that it had been agreed that a promissory note for 500*l.* given to the wife by her brother, should be cancelled, and that he should give his bond to the trustees for the amount, it was witnessed, agreed, and declared that the trustees should stand possessed of these funds, in trust to pay the interest and dividends to the husband for life; and, upon the death of the survivor, to transfer the funds to the children of the marriage, and in case there should be no children, then to such persons as the wife should by deed or will, during and notwithstanding her coverture, appoint; and, in default of such appointment, to the husband, his executors, administrators, and assigns. There were no children of the marriage. The wife survived the husband. *Held*, that in the event of the death of the wife without making a valid appointment, the fund would belong to the husband's personal representative, as having been reduced into the husband's possession by the settlement. *Burnham v. Bennett*, 2 Coll. 254.

Cases cited by the court: *Scawer v. Blunt*, 7 Ves. 294; *Wall v. Tomlinson*, 16 Ves. 413; *Ryland v. Smith*, 1 Myl. & Cr. 53.

5. By a marriage settlement a sum of 30,000*l.*, Irish currency, was invested in trustees, upon trust, out of the interest and dividends of two equal third parts of it, together with the interest of dividends of the remaining third part, to make up the annual sum of 500*l.*, and pay such annual sum to the husband and wife during the lifetime of *A.*; *Held*, that the husband and wife were entitled, during the life of *A.*, to the income of the remaining third part, whether it did or did not exceed 500*l.* per annum. *Davis v. Morier*, 2 Coll. 303.

6. *Equity to a settlement*.—*Agreement*.—*Interest of the children*.—A married woman entitled to a legacy, appeared by her counsel at the hearing of the cause, and claimed her equity to a settlement out of the fund. The legacy was directed to be carried to the separate account of the husband and wife. The husband was a bankrupt, and his assignee sold his interest in the legacy. The solicitor for the purchaser and for the wife agreed to refer the claim of the wife to their counsel; and the counsel determined that she was entitled to a settlement of the moiety, subject to the costs.

Before any further steps were taken, the wife died, leaving children: *Held*, that the husband and those claiming under him were, by the steps which had been taken, bound to allow a settlement of part of the fund upon the wife and children, and that, upon the death of the wife, the children were entitled to the portion which would have been settled. *Lloyd v. Mason*, 5 Hare, 149.

See *Jointure*; *Settlement*, 1.

ILLEGITIMATE CHILDREN.

Not in esse.—*Semble*, every gift to illegitimate children *not in esse* is void, and there is no distinction between cases where they are described by reference to a particular father, and where not. *Connor, in re*, 8 Ir. Eq. Rep. 401.

1. *Maintenance*.—*Deed*.—*Construction*.—A female infant was entitled to have a portion of 30,000*l.* raised under the trusts of a term, on her attaining 21, or marrying under that age; and the estates were charged with the payment of such yearly sum for her maintenance in the meantime, not exceeding what the interest of her portion would amount to at such rate (not exceeding 5*l.* per cent. per annum) as her father should from time to time appoint, and in default of such appointment, then of such yearly sum, not exceeding the amount of interest after the rate aforesaid, as the trustees or trustee of the term should deem sufficient and proper; the said yearly sum to be free from all deductions, and to be raised and paid in such manner and at such times as to the trustees for the time being should seem meet. The father died without having made any appointment as to the sum to be applied for his daughter's maintenance. *Held*, that she was not entitled to be allowed maintenance to the full amount authorised by the deed, but that the amount must be settled by the Master. *Lygon v. Lord Coventry*, 14 Sim. 41.

Cases cited in the judgment: *Codrington v. Lord Foley*, 6 Ves. 380; *Foljambe v. Wilmoughby*, 2 Sim. & Stu. 165.

2. A female infant was entitled, on attaining 21, or marrying under that age, to have a portion raised out of estates of which her brother was tenant in tail, and to be maintained out of the rents in the meantime; and she was also entitled, on the happening of the same events, to a sum of stock, and to be maintained out of the dividends in the meantime; subject to which the dividends were to be accumulated and added to the capital. *Held*, that she must be maintained out of the rents, and not out of the dividends, that arrangement being most beneficial to her. *Lygon v. Lord Coventry*, 14 Sim. 41.

3. Where a female infant had been made a ward of court, and, in contemplation of her marriage, terms for the settlement of her property and that of her intended husband, (which were for the benefit of the intended husband

and wife and the issue of the marriage,) had been approved by the Master, and his approval had been confirmed by the court, it was held not to be competent to the husband and wife, by delaying the marriage till after the wife had attained her majority, and entering into fresh settlements, to defeat the settlement of the court. Principles on which the court acts in relation to the marriage of infants and the settlement of their property. *Hobson v. Ferraby*, 2 Coll. 412.

4. A portion of the income of an infant's real estate ordered to be applied in charity. *Langton v. Brackenbury*, 2 Coll. 446.

JOINTURE.

A covenant by the husband in marriage articles to provide a jointure of 200*l.* sterling per annum, such jointure to be levied on the lands of D. and B., though the jointure be paid, will not bar the wife's right to her distributive share of the personal estate. *Creagh v. Creagh*, 8 Ir. Eq. Rep. 68.

Cases cited in the judgment: *Vizard v. Longden*, Kelynge, 18; *Cresswell v. Byron*, 3 Bro. C. C. 362.

See *Husband and Wife*; *Married Woman*.

LEASE.

1. A lease was made for three lives, and the survivor of them, and for the lives and life of such other person and persons as should be nominated by the lessee, his heirs and assigns, upon the death of any of the persons for whose lives the premises were granted, or upon the death of any such person or persons as should at any time thereafter be nominated for ever, according to the covenants and agreements for that purpose thereafter contained. The lease did not contain an express covenant by the lessor to renew; but the lessee covenanted, within six months after the decease of each of the *cestuis que vie* therein, and of each person who should thereafter be nominated, to pay, in the nature of a fine, for each person so dying, to the lessor and his heirs, a peppercorn, if demanded, and powers of distress and entry in case the fine should be in arrear, were reserved to the lessor and his heirs; and the lessor covenanted that the lessee and his heirs, paying the rent and fines, might quietly enjoy according to the true intent and meaning of the indenture: *Held*, that this was a lease for lives renewable for ever. *Chambers v. Gausson*, 2 J. & L. 99.

2. *Graft*.—S. was entitled, with her brother and four sisters, to a lease for 31 years, as one of the next of kin to her mother, one of whose personal representatives she also was. The landlord made a lease for 51 years, which was expressed to be made in consideration of the surrender of the former lease, and described the lands as late in the possession of the mother, and then in the possession of S. and one of her sisters who was her co-administratrix. There was an endorsement on the lease, stating that it was made in trust for herself and her brother and sisters. S. married, and

the landlord made a lease to her husband or the same lands for 40 years, to commence after the expiration of the 51 years. *Held*, that the new lease was a graft.

Although a plaintiff is bound to prove his whole case at the hearing, yet, if there be no failure of title, but an omission in the proof of it, the court may, in its discretion, direct a reference to the Master to inquire into it. *McAllister v. Walsh*, 8 Ir. Eq. Rep. 250.

3. "*Best rent*."—Under a power to lease at the *best rent*, the very highest rent that can be obtained is not required, and the true criterion is, whether the rent has been fairly obtained without any private advantage to the donee of the power; and therefore, an agreement which the court treated as subject to the same rule was enforced, though the rent obtained was below the offers made by less solvent tenants, and below the average at which the lands were valued, when the argument was fairly made and was a prudent one. *Dyas v. Cruise*, 8 Ir. Eq. Rep. 407.

Case cited in the judgment: *Doe d. Lawton, v. Radcliffe*, 19 East, 278; *Queensbury's case*, 2 Sugd. Powers, 395, 396; *Harnett v. Yielding*, 2 Sch. & Lef. 549.

4. *Provisional assignee*.—A tenant for life, with power to lease, conveyed his estate for a term of years to secure certain annuities, and covenanted with the annuitant to lease the lands as the annuitant should direct. The tenant for life became insolvent, and his estate became vested in the provisional assignee. The tenant for life and the annuitant joined in granting a new lease, which the court considered would be beneficial to the creditors: *Held*, that the provisional assignee was bound to do all necessary acts to give effect to the lease, as he took the estate bound by the insolvent's covenants. *Dyas v. Cruise*, 8 Ir. Eq. Rep. 407.

See *Surrender*.

MAINTENANCE.

See *Infant*, 1.

MARRIED WOMAN.

1. *Separate use*.—A court of equity will give effect during coverture to a clause in restraint of alienation, annexed on gift to a married woman for her separate use, whether the subject of the gift be real or personal estate, or whether it be in fee or only for life. *Raggett v. Meux*, 1 Phill. 627.

Case cited in the judgment: *Tullett v. Armstrong*, 4 My. & Cr. 377.

2. By a marriage settlement the wife has power, notwithstanding "her coverture," to appoint to the children of the marriage; and in default of such children, she has a power, "during and notwithstanding" her coverture, to appoint to other persons. The latter power cannot be exercised during her widowhood. *Quere*, whether the former can? *Burnham v. Bennett*, 2 Coll. 260.

3. *Power of disposition*.—By marriage

articles, a sum of money was vested in trust to permit and suffer the wife, during the joint lives of her and her husband, to receive the interest to her separate use; and after the death of the husband, in trust for the wife and her assigns during her life, in case she should survive him; and after the death of the wife, as to one moiety upon certain trusts, and as to the other moiety, in trust for the sole absolute use of the wife, and to be disposed of by her in such manner as she might appoint by any deed during her coverture, or by any will to be duly executed by her, notwithstanding her coverture: *Held*, that the wife could not dispose of her entire estate in the latter moiety of the fund in the husband's lifetime, and therefore, no valid release could be given for it. *Nixon v. Nixon*, 8 Ir. Eq. Rep. 254.

MORTGAGE.

1. *Production*.—In a will to redeem, the plaintiff contested the validity of one of several mortgages held by the defendant: *Held*, that he was not entitled to a production. *Crisp v. Platel*, 8 Beav. 62.

2. *Bond*.—A. authorised his solicitor to borrow 700*l.* from B. to pay off a mortgage, and for that purpose, executed a bond and a transfer of the mortgage. The solicitor, who had in his hands 700*l.* belonging to B., handed over to him the bond, in which it was stated, that it was intended as a collateral security. The solicitor retained the transfer, which was never executed by the mortgagee, and afterwards absconded without having paid off the mortgage. The court relieved A. from the bond. *Young v. Guy*, 8 Beav. 147.

3. *Priorities*.—*Notice*.—*Equitable interest in land*.—A first mortgage of real estate was made to A. in fee. A second mortgage was then made to B. of the same estate, together with other real estate, by a release and conveyance of the respective premises to C., as a trustee for B., with power of sale. B. afterwards advanced a further sum to the mortgagor on the security of the same estate, but gave no notice of the advance to A. or C.

Subsequently, C. (after inquiring of A. whether he had notice of any incumbrance other than his own, and that of which C. was a trustee for B.) advanced a further sum to the mortgagor on the same security, and gave notice of his mortgage to A.: *Held*, that the several mortgages took effect, with regard to the different estates, according to the order of time at which they were respectively created; and that their priorities were not affected by the giving, or the omitting to give, notice to the party in whom the legal estate was vested.

That the doctrine of notice, applicable in determining the priority of charges or choses in action, does not prevail as to equitable estates in land. *Wilmot v. Pike*, 5 Hare, 14.

Cases cited in the judgment: *Dearle v. Hall*, 3 Russ. 1; *Loverbridge v. Cooper*, ib. 30; *Foster v. Blackstone*, 1 Myl. & K. 297; 9 Bligh, N. S. 552; 3 Cl. & Fin. 456; *Cooper v. Fynmore*, 3 Russ. 60; *Jones v. Jones*, 8 Sim. 633;

Stanhope v. E. Verney, 2 Eldon, 81; Maundrell v. Maundrell, 10 Ves. 271.

4. *Valuable consideration without notice.*—A person who advances money *bona fide* on the deposit of title deeds, made by one who has no right to them, or the estate to which they relate, will be protected in equity as a purchaser for valuable consideration without notice, and may retain the deeds, though the person making the deposit was not in possession of the property, if it be an incorporeal hereditament. *Joyce v. De Moleyns*, 8 Ir. Eq. Rep. 215.

Case cited in the judgment: *Walwyn v. Lee*, 9 Ves. 24.

PIN-MONEY.

In settlements, where husband and wife are living together, and the case is not one of contempt, it is not the course to settle any part on the wife to her separate use by way of pin-money, unless the property be a large one. Such a provision refused where the sum to be settled was under 1,400*l.* *Harpur v. Ball*, 8 Ir. Eq. Rep. 404.

POWER.

Remoteness.—*Deed.*—*Construction.*—By a marriage settlement, the trustees were directed, after the decease of the survivor of the husband and wife, to convey, assign, and deliver the settled property to such children or child of the marriage, or the lawful issue of such as should or might be living at the decease of the survivor, and who should attain 21, to whom the husband and wife should jointly appoint, and, in default of appointment, to permit the property to be held and enjoyed by and equally between all the children of the marriage and the survivors of them, and the lawful issue of such children or child so surviving the husband and wife and attaining 21, such issue representing and taking the above share that the parent would have taken if living.

Held, that the words in the clause creating the power, "who shall or may be living at the decease of the survivors," referred to the children of the marriage and not to their issue; and therefore that clause exceeded the limits prescribed by law; and consequently, that an appointment made to the son of a daughter of the marriage, was void. *Thomas v. Thomas*, 14 Sim. 234.

PRIORITY.

Incumbrances.—*A.*, one of the residuary legatees, and *B.*, an annuitant under a will, joined in a mortgage of their respective interests to *E.* Afterwards *B.* joined with *D.*, another of the residuary legatees, in a mortgage to *E.* Then *F.* paid the debt due to *C.*, and took an assignment of his mortgage: *Held*, that *F.* was not entitled to priority over *E.* with respect to *B.*'s annuity. *Medley v. Horton*, 14 Sim. 226.

See *Mortgage*, 3.

REMAINDER.

See *Estate*.

SETTLEMENT.

1. *Husband.*—*Heir.*—In a marriage settlement, which comprised only the property of the wife, it was agreed between the intended husband and wife, and each of them covenanted with the trustees, that any property to which the wife might become entitled during the coverture, should be conveyed to such uses as she should by deed or will appoint, and in default of appointment, to the use of herself for life, remainder to the use of the husband for his life, remainder to the use of the wife's children, and in default of such children, to the use of *A. B.* (her niece) and her heirs. After the death of the wife without children, and without having exercised her power of appointment, the husband filed a bill against her heir-at-law, praying that a real estate, to which she had become entitled during her life-time, might be conveyed to the uses of the settlement. On the question, whether the decree for specific performance should be confined to the life estate of the husband, or should extend to the limitation to the niece, (who was also dead): *Held*, that it should extend to the latter, on the ground, that the right of the husband to a specific performance of part of the covenant drew with it the right to a specific performance of the whole, at least as against the heir of the settlor, whatever it might have done as against a purchaser for value. *Davenport v. Bishopp*, 1 Phill. 698.

Cases cited in the judgment: *Sutton v. Chetwynd*, 1 Ves. sen. 73; *Goring v. Nash*, 3 Atk. 190.

2. *Arrears of income.*—A person who by mistake had received for some years a less income than he was entitled to under his marriage settlement, *Held*, under the circumstances of the case, to be entitled to have the difference made up to him out of the estate of the deceased settlor. *Davis v. Morier*, 2 Coll. 303.

See *Husband and Wife*.

SPECIFIC PERFORMANCE.

1. *Questions of Title.*—Objections to title mean such objections as can only be properly the subject of adjudication upon the investigation of the title; and such are cases where the dispute is as to the application of the conditions of sale, the propriety or validity of the conditions themselves not being questioned. *Wood v. Machu*, 5 Hare, 158.

Cases cited in the judgment: *Whitby v. Cattle*, T. & R. 78; *Boyes v. Liddell*, 1 Y. & C. C. C. 133.

2. *Rescinding contract.*—*Time.*—Reference as to title directed on motion after answer to a bill for specific performance by the vendor against the purchaser, notwithstanding the purchaser stated his requisition on the abstract had not been complied with, although the time for completion had long expired, and he had given notice of his intention to rescind the contract. *Wood v. Machu*, 5 Hare, 158.

SURRENDER.

Lease.—*Tenant for life.*—The court has no

authority to set up a lease, which by the *bond fide* exercise of the power vested by law in a tenant for life to grant a new lease, has, by the doctrine of surrender by operation of law, been determined, there being no fraud or collusion, or other circumstance, to justify the interference of the court. *Nixon v. Robinson*, 2 J. & L. 4.

TENANT BY CURTESY.

By a marriage settlement, the wife's freehold estates were vested in a trustee in trust for her separate use during her life; remainder for such persons as she should appoint by deed or will, and in default of appointment, in trust for her right heirs. The wife died without having made any appointment, leaving her husband and a son surviving. After her death the trustee sold the estate under a power in the settlement which directed the proceeds to be invested in the purchase of other lands, or on mortgage, or in the funds, and the securities to be held on the trusts aforesaid.

Held, that, on the wife's death, the husband became equitable tenant by the curtesy of the estates, and therefore, was entitled to the interest of the purchase money during his life. *Follett v. Tyrer*, 14 Sim. 125.

Cases cited in the judgment: *Morgan v. Morgan*, 5 Madd. 408.

TENANT FOR LIFE.

1. *Lease*.—Though a contract to lease by a tenant for life with a leasing power cannot be enforced as an execution of the power, it may be partially enforced by decreeing a lease for the life of the tenant for life if the contract was *bond fide*, and more especially if there has been an outlay on the faith of it. *Dyas v. Cruise*, 8 Ir. Eq. Rep. 407.

Cases cited in the judgment: *Graham v. Oliver*, 3 Bea. 128; *Dowell v. Dew*, 1 Y. & Col. C. C. 345; *Lord Bolingbroke's case*, 1 Sch. & Lef. 19.

And see *Surrender*.

2. *Timber money*.—*Remainder-man*.—The proceeds of timber cut and sold by order of the court, during the life of a late tenant for life who was impeachable of waste, ordered to be paid to the tenant for life in possession who was unimpeachable of waste. *Phillips v. Barlow*, 14 Sim. 263.

Cases cited in the judgment: *Waldo v. Waldo*, 12 Sim. 107.

3. *Remainder-man*.—*Trees*.—As between tenant for life and remainder-man, the thinnings of fir trees under twenty years of age belong to the tenant for life. *Pidgeley v. Rawling*, 2 Coll. 275.

4. *Proportion of rent*.—Where an estate, subject to a charge bearing interest, is limited to several persons in succession, as tenants for life, the conclusion to be drawn from the authorities appears to be, that each tenant for life is liable only for the interest for his own time, but that to liquidate the arrears during his own time he must furnish all the rents, if

necessary, during the whole of his life. *Caulfield v. Maguire*, 2 J. & L. 141.

TITLE.

Trustees.—The rule which relieves a purchaser from seeing to the application of the purchase-money, when the estate is subject to a primary general charge of debt, has reference to the time of the testator's death, and does not cease to be applicable, though the debt be subsequently paid; and therefore, where an estate so charged was sold by the trustee, it was held, that the *cestuis que trust* were not necessary parties to the conveyance, though the sales did not take place till 25 years after the testator's death, and the vendor, on being asked by the purchaser, whether all the debts were not paid, had refused to answer the question. *Forbes v. Peacock*, 1 Phill. 717.

Cases cited in the judgment: *Watkins v. Cheek*, 2 Sim. & St. 199; *Balfour v. Welland*, 16 Ves. 151; *Eland*, 4 My. & Cr. 429; *Johnson v. Kennett*, 3 Myl. & K. 631; *Page v. Adam*, 4 Beav. 469.

VENDOR AND PURCHASER.

1. *Good title to part*.—After the purchaser of an estate sold under a decree, had approved of the title, a deed was discovered which showed that the plaintiff could not make a title to more than a moiety of the estate. The court discharged the purchaser from his purchase: *Ward v. Truthen*, 14 Sim. 82.

2. *Power of sale*.—*Title*.—Testator devised his real estate to trustees, in trust, during the first 15 years after his death, to apply the rents in discharge of the charges and incumbrances on his estates, and also of the debts which he should own at his decease; and if by any reason whatever, in the opinion of his trustees, a sale should become necessary of any of the estates, for the purpose of raising any sums of money charged on his estates, before the expiration of the 15 years, then he authorised the trustees to make such sale, and to apply the produce in discharge of such incumbrances: and he declared that their receipts for any money payable to them under his will, should discharge the persons paying the same from being answerable for the application thereof, or for being bound to inquire as to the necessity or expediency of any sale which might be made by the trustees. The testator's personal estate being insufficient to pay his debts, and the rents of his real estates being insufficient to pay the interest of the incumbrances thereon, the trustees sold the whole of the estates; and thereby raised considerably more than the amount of the incumbrances.

The court, in a suit for specific performance, held, that the power of sale depended on the opinion of the trustees, that a sale was necessary; and decreed the purchaser to complete his purchase. *Rendlesham, Lord, v. Meux*, 14 Sim. 249.

3. *Abstract of title*.—*Conveyance*.—An abstract showed the equitable fees to be in the vendor, and the legal estate to be in A. as a mortgagee for a term, and subject thereto, in B.

in fee. By a supplemental abstract it appeared, that before the first abstract was delivered, *A.* assigned the mortgage-money to *B.*, and was declared a trustee of the term for him, and that he had since died intestate; that his father, who first took out administration to him, was also dead, and that he remained unrepresented for some years; after which *J.* took out administration to him.

Held, that the first abstract showed a complete title; the tracing of the title to the legal estate, being matter of conveyance merely. *Avarne v. Brown*, 14 Sim. 303

Case cited in the judgment: *Wynne v. Griffith*, 1 Russ. 283.

4. *Title.—Judgment debts.*—*A.* devised his estate at *H.* to his second son, who survived him, and afterwards died intestate; whereupon the estate descended to *N.*, his eldest brother. Pending a suit instituted by *A.*'s creditors, judgments were entered up against *N.*, which remained unsatisfied when the estate at *H.*, together with the testator's other estates, were sold under the decree in the suit, for payment of his debts.

Held, that *N.*'s judgment creditors were necessary parties to the conveyance of the estate at *H.*, and as they could not be compelled to join in the conveyance, because they were not parties to the suit, that a good title could not be made to the estate. *Craddock v. Pipes*, 14 Sim. 310.

5. *Insolvency.—Provisional assignee.—Evidence.*—The purchaser of a real estate became insolvent after part, but before the whole of the purchase money was paid, or the conveyance executed. The vendor died, having devised the estate to the plaintiffs, and appointed one of them his executor. The bill was filed against the provisional assignee of the insolvents and an equitable mortgagee by deposit of the agreement for purchase, and it prayed the payment of the residue of the purchase money by the defendants, or by sale of the estate. The plaintiffs did not prove their title as devisees. The defendants disclaimed: *Held*, that the court could not make the decree sought without evidence of the devise; but that, upon payment of the costs of the defendants, the court might (the defendants not opposing) declare the plaintiffs absolutely entitled to the estate. *Gabriel v. Sturgis*, 5 Hare, 97.

6. *Re-sale.*—If, at a sale by auction under the order of the court, a purchaser sell his purchase for an additional sum beyond his purchase money, the court will order the property to be re-sold; and *semble*, that, if upon such re-sale, the property does not produce the improved price agreed to be given by the sub-purchaser, he will be responsible to the court for the difference. *Holroyd v. Wyatt*, 2 Coll. 327.

See Notes on this case, p. 100, ante.

7. *Title accepted.*—Purchaser agreed to accept vendor's title "without dispute." The purchaser afterwards objected, that, at the date of the agreement, there was a flaw in the vendor's title, consisting of an unreleased incum-

brance, which left the legal estate in the property outstanding. Upon a bill filed by the vendor for specific performance: *Held*, that the purchaser was precluded by the terms of his contract from insisting on the objection. *Duke v. Barnett*, 2 Coll. 337.

Cases cited in the judgment: *Shepherd v. Kentley*, 1 Cr. M. & R. 117; *Spratt v. Jeffery*, 10 B. & C. 249.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Finden v. Stephens. Dec. 9th & 11th.

RECOMMENDATION IN A WILL TO AN OFFICE.—WORDS OF ADVICE NOT A TRUST.—INJUNCTION.

The expression of a testator's wish and desire that the trustees of his will should, whenever they might have occasion for a receiver, agent, or manager of his estates, appoint a certain person, does not confer upon the latter an irrevocable right to be so appointed.

An injunction will not be granted to restrain the anticipated commission of an act where the plaintiff's equity (if any) would not arise until such act should have been done.

A WILL devising and bequeathing all the real and personal estate of the testator to the defendant and another, upon certain trusts, with powers of leasing and selling, contained the following clause:—"And, inasmuch as my estates will require more management than I can expect of my trustees personally to bestow, it is my wish and desire that the hereinbefore named Thomas Finden, in whose judgment and integrity I place great confidence, be appointed for all purposes for which they or he my trustees or trustee may have occasion for an agent, receiver, or manager of all or any of my estates and property. And in case the said Thomas Finden die or desire not to act further in the said office, then it shall be lawful for my said wife's nieces and the survivors, &c., to appoint some other person in the place of the said J. F."

After the testator's death the trustees intimated to the plaintiff their willingness that he should receive the rents of the houses in London, but expressed their intention of appointing a person resident in Reading to manage the property there situated, urging that almost daily communication between such manager and the tenants would be necessary. Under these circumstances the plaintiff filed a bill against the trustees and the testator's nieces mentioned in the above extract, praying that, under the true construction of the will, it might be declared that he was entitled to be appointed such receiver, &c.; when his services should be required by the defendants; and that they might be restrained from appointing

any other person. A general demurrer to this bill for want of equity had been overruled by the Vice-Chancellor of England, on the 9th of November last.

Mr. *Stuart* and Mr. *Bozalzette* in support of the demurrer submitted that the present case must be governed by that of *Shaw v. Lawless*, 5 Cl. & Fin. 129, and the Lord Chancellor remarked that the latter was a very strong case.

Mr. *Bethell* and Mr. *Moxon* for the plaintiff contended that in *Shaw v. Lawless* the bill was for the absolute appointment of a receiver contrary to the wishes of the tenant for life. *Friswell v. Moore*, there cited, proved that the gift of an office was a sufficient interest for the plaintiff's application. The pecuniary remuneration is not ascertained in the present case, nor was it in *Hibbert v. Hibbert*, 3 Mer. 681. They also cited *Tibbetts v. Tibbetts*, 19 Ves. 656, and *Williams v. Corbett*, 8 Sim. 349. If the testator's intention was clear and manifest, the trustees could not disregard it because it might prove burthensome to the estate; if they could, the grant of an annuity might be so considered. The decree prayed for would be that no person but the plaintiff should be appointed receiver. [The Lord Chancellor. It appears to me that you have no case. No person has been appointed. It will be time enough to apply when such an appointment takes place. You are in this dilemma, that the injunction seeks to restrain the very act which would give the plaintiff his alleged equity.] The correspondence shows that the trustees contemplate appointing a person resident at Reading.

Mr. *Stuart* in reply urged that precatory words such as those in the will never could have the same effect in raising a trust as those which are mandatory. In *Williams v. Corbett* an auditor was expressly appointed by the will, and, as he would be a check upon the trustees, his appointment would benefit the legatees. The decree asked for would be too vague, although the Vice-Chancellor thought, that as the trustees were to ascertain the occasion of the services being required there was sufficient certainty for its operation.

The Lord Chancellor considered the present case to come within that of *Shaw v. Lawless*, where the question was, whether the words amounted to a trust, or only to advice. All the observations in that case apply to this. Is it consistent with the powers of leasing and selling with consent of the trustees that the plaintiff should have an irrevocable right to be manager? If so, he would be a *cestui que trust* in respect of his per centage, and have the same rights of interference with the property as other *cestuis que trust*. There were here many other objections than in *Shaw v. Lawless*. If the plaintiff should die or decline to act, he is not to appoint his successor, and this shows that the object was not for his benefit, but for the good management of the estate. Another objection was the want of certainty, as his services were only to be required when the trustees had occasion for them. (Mit. Pl. 127, (3rd ed.) and the cases there cited, note a.) If the

plaintiff had an equity, the dissolution of the injunction would not be prejudicial to him, as he might then be enabled to raise a question which has been now prematurely attempted.

Demurrer allowed.

Lord Suffield v. Bond. December 16.

The judgment of the Master of the Rolls in this case (reported in our last number, p. 164) was confirmed by the Lord Chancellor on the 16th instant.

Jordan v Jones. December 21.

In this case, which is of great practical importance, the Lord Chancellor has decided that the court has no power to compel a married woman to acknowledge a deed pursuant to the Pines and Recoveries Act. We shall give an early report of the case.

Rolls Court.

Kerton v. Lyne. Nov. 25th, 1846.

21ST ORDER OF 1845.

Where *A.* had appeared by a solicitor who had since died, the court required an application to be made to *A.* to appoint another solicitor before it would allow personal service under the 21st order of 1845, to be good service.

Mr. *Baily* moved, under the 21st Order of 1845, that personal service of a notice of motion upon a lady who had appeared by a solicitor, now deceased, and had not appointed any other solicitor, should be deemed good service; but

Lord Langdale refused to make the order until it was ascertained that the lady in question was aware of the death of her solicitor, and refused to appoint a new one, observing that it would not be conducive to justice if a person who had trusted her cause to a solicitor should, all at once, without warning, be called upon to attend to the matter herself.

In re George Smith. Dec. 12th, 1846.

COSTS.—TAXATION.

If a bill of costs contains charges relating to parliamentary business, and also charges relating to general business, the Court of Chancery has jurisdiction, under the act of 6 & 7 Vict. c. 73, to make an order for its taxation; and it is unnecessary to obtain the Speaker's warrant, under the 6 G. 4, c. 123, for taxing those costs which relate to the parliamentary matters.

By the 6 G. 4, c. 123, s. 10, it is enacted that if any petitioner for a private bill brought into the House of Commons; or his agent or agents shall make application to the Speaker of the House of Commons, complaining of amount of the costs and expenses charged

any parliamentary agent, or solicitor, or any other person employed in soliciting or preparing such bill, or in complying with the standing orders relative thereto on behalf of any such petitioner; or if any parliamentary agent, or solicitor, or other person employed in soliciting any such private bill, or in preparing the same, or in complying with the standing orders relative thereto, shall make application to the Speaker complaining that he is aggrieved by the nonpayment of the costs and expenses charged by him in respect of any such private bill, it shall be lawful for the Speaker, upon receiving any such application, and he is authorised and required to direct that such costs and expenses, so far as the same shall relate to the House of Commons, shall be taxed by such person or persons as the Speaker shall think proper to appoint, who shall tax the same and report to the Speaker the amount of such costs and expenses to be allowed upon such taxation; and the Speaker shall, upon application, deliver to the person or persons concerned therein and requiring the same a certificate signed by himself, expressing the amount of the costs and expenses allowed by such report; and such certificate so signed by the Speaker shall be conclusive evidence of all demands therein certified, and the party claiming under the same shall, upon receiving the amount so certified, give a receipt at the foot of such certificate, and such receipt shall be sufficient discharge for such costs and expenses. And by the 11th section of the same act it is enacted, that if any petitioner, agent, or other person liable to the payment of such costs and expenses shall refuse to pay the amount so certified by the Speaker in any action which shall be commenced for the recovery of such costs and expenses, such certificate so signed by the Speaker as aforesaid shall have the force and effect of a *warrant to confess judgment*, and the court in which such action shall be commenced shall, upon motion and production of such certificate, order judgment to be entered up for the sum specified in such certificate in like manner as if the defendant or defendants in any such action had signed a warrant to confess judgment in such action to that amount.

The petitioner in this case had conducted various proceedings on behalf of a railroad company, and having made out his bill of costs, including not only his general charges against the company, but also his costs for soliciting a bill in parliament and proceedings relating to the standing orders and for opposing a competing line, obtained the Speaker's warrant, under the 6 G. 4, c. 123, for taxing it. The bill was referred to Master Follett, who being of opinion that he could only tax those portions of it which related to parliamentary matters, the petitioner now applied for an order, under the 6 & 7 Vict. c. 73, to tax the whole bill.

Mr. R. S. T. Daniel for the petitioner.

The Master of the Rolls said the objection of the Master was quite right, and that no proper taxation could be made, except under the 6 & 7 Vict. c. 73, which authorised the court to make

an order for taxation generally. His lordship therefore made the order for taxation, but stated, that as the Speaker's warrant was unnecessary, and an order of course might have been obtained under the latter statute, the petitioner must pay the costs of this application.

Queen's Bench.

(Before the Four Judges.)

Bromage v. Vaughan and Bevan. Michaelmas Term, 1846.

BILL OF EXCHANGE.—NOTICE OF DISHONOUR.

In an action by the indorsee against the indorser of a bill of exchange it was alleged in the declaration to be accepted payable at the London Joint Stock Bank, but in the notice of dishonour the bill was described as payable at the London and Westminster Joint Stock Bank, which was shown to be a different bank from the London Joint Stock bank. Held, that the notice of dishonour was sufficient.

THIS was an action on a bill of exchange described in the declaration as drawn by the defendant Vaughan, and accepted by one Beaumont, payable at the London Joint Stock Bank in London, and indorsed by Vaughan for the firm of "Vaughan & Bevan," to the plaintiff. Vaughan suffered judgment by default. The defendant Bevan pleaded that the said bill was not indorsed in manner and form as alleged. At the trial before Wilde, C. J., at the summer assizes for the county of Gloucester, it appeared in evidence that the bill, as alleged, was payable at the London Joint Stock Bank, but in the notice of dishonour the bill was described as payable at the London and Westminster Joint Stock Bank. It also appeared that the London and Westminster Joint Stock Bank and the London Joint Stock Bank were distinct banking companies in London. An objection was taken that the notice of dishonour was insufficient, but the objection was overruled by the learned judge, and a verdict was found for the plaintiff for the amount of the bill.

Mr. *Whitely*, now moved, in pursuance of leave reserved, to enter a nonsuit, and contended that the notice of dishonour was insufficient. The notice must point out the particular bill which is presented for payment, and the declaration alleges the bill to be payable at one bank, and the notice of dishonour describes the bill to be payable at another distinct bank.

Cur. adv. vult.

Lord Denman, C. J., now delivered the judgment of the court.* This was an action by the indorsee against the indorser of a bill of exchange. An objection was taken at the trial to the notice of dishonour, which stated that the bill was accepted payable at the London and Westminster Joint Stock Bank, whereas it

* Before Lord Denman, C. J., Coleridge and Wightman, J.'s.

was accepted payable at the London Joint Stock Bank. This is a misdescription of the bill, but it is a misdescription of that kind which, where there is evidence of identity to go to the jury, has been held, in the case of *Stockman v. Parr*,^b not to vitiate a notice of dishonour. There the bill was for 53l.; the noting and expenses were 6s. 6d. These expenses were, in the notice of dishonour, added to the amount of the bill, as if forming a portion of it, but the error was treated as immaterial, and the notice was held sufficient. On this ground, therefore, we are of opinion that there ought not to be a rule.

Rule refused.

Slater v. Hodgson. Michaelmas Term, 1846.

EVIDENCE. — DOCUMENTS. — PLACE OF CUSTODY.

At the trial of a feigned issue to ascertain whether certain townships composing a parish were entitled to the separate appointment of overseers, the master of the workhouse of the union in which the parish was situate produced certain bastardy bonds from the year 1716, which he stated he received about four years ago, but had no knowledge whence they came.

Held, that this evidence was properly received, the workhouse being the natural repository for such documents, and one in which it was reasonable to expect to find them.

THIS was a feigned issue directed to be tried to ascertain whether a parish could have the benefit of the statute 43 Eliz., or whether the townships composing that parish should have the appointment of separate overseers. The case was tried before Mr. Justice Cresswell at the last assizes for the county of Cumberland, and a verdict found for the plaintiff. The counsel for the plaintiff put in evidence certain bastardy and indemnity bonds from the year 1716, and it appeared that these documents were produced by the master of the union workhouse of which union this parish formed one. He stated that these documents had been brought to the workhouse about four years ago, but that no account had been given of them. It was objected that this evidence was not admissible, because it was not shown that the documents came from the proper custody, but the learned judge admitted the evidence.

Mr. Knowles now moved for a rule to show cause why there should not be a new trial on the ground of the improper reception of evidence. No proper foundation has been laid for the reception of these documents; the master of the workhouse receives them without knowing whence they came. The parish chest is the proper place of custody; and if it is said that the parish is now incorporated into the union, and that the parish documents have been removed there, still evidence should be

given to show how they came into the union workhouse.

Cur. adv. vult.

Lord Denman, C. J., delivered the judgment of the court, and said that the court was of opinion that these documents had been brought from a place which seemed a very natural repository for them, and one in which it was very reasonable to find them, and that the court would not grant a rule.

Rule refused.

Queen's Bench Practice Court.

Doe dem. Body v. Cor. Trinity Term, June, 6th, 1846.

ARBITRATION.—REFERENCE BEFORE VERDICT.—AUTHORITY OF ARBITRATION.—ENTRY OF JUDGMENT.—FINALITY OF AWARD.

An arbitrator, to whom a cause is referred after issue, but before proceeding to trial and without the verdict of a jury, has no authority to order a judgment to be entered in the action; but if the award be, independently of such order, final and conclusive, the court will not set it aside, because it also contains an order to enter up judgment, but will only set aside that part of it which directs the judgment to be entered, and the judgment, if any, signed thereupon.

Where, therefore, after issue joined in ejectment but before verdict, the matters at issue in the action, together with all claims in respect of mesne profits and all matters in difference between the parties, and the costs of the action, and of the reference, were refused by a judge's order; and the award directed judgment in the action to be entered for the plaintiff with one shilling damages, and that the plaintiff should recover under the same judgment, a plot of land, specifically described; and that the defendant should pay 12l. as mesne profits; and the plaintiff taxed costs in the action, and a specified portion of the costs of the reference and award; the court set aside a judgment signed by the plaintiff under the award, but refused to set aside the award itself, as independently of that part which directed the judgment, it sufficiently decided on the matters referred.

THIS was an action of ejectment, which was after issue joined referred by a judge's order to the award of an arbitrator. By the order in question it was directed that the matters at issue in the action, together with all claims in respect of the mesne profits of the land, and all matters in difference between the parties, together with the costs of the action and of the reference to be made pursuant to the order should be referred to the award of a certain arbitrator therein named, so as the said arbitrator do make and publish his award in writing of and concerning the matters referred to him on or before 29th September next. The order

then contained the usual power for authorising the arbitrator to enlarge the time for making his award. The arbitrator duly entered upon the reference in question, and on the 30th January, 1846, he made his award, which after reciting the order of reference, and the enlargement of the time for making the award, &c., proceeded as follows: "I do order and award that judgment for the plaintiff be entered in the said action with 1s. damages, and that the plaintiff do recover under the same judgment a plot or parcel of land (here the land in question was specifically described in the award by metes and bounds); and I do further order and award that the said defendant shall pay to the plaintiff the sum of 12l., as and for the mesne profits of the said land, and the plaintiff's costs of the said action to be taxed by the proper officer, and the sum 2l. 10s. in part of the said plaintiff's costs of the reference; and I do further order and award that, except as aforesaid, each party shall pay his own costs of the said reference, and that the costs of this my award shall be paid and borne by them in equal moieties." On the 21st April following the lessor of the plaintiff, in pursuance of the terms of the award, signed final judgment in the ejectment with 1s. damages. A rule was in consequence afterwards obtained by the defendant calling upon the lessor of the plaintiff to shew cause why the judgment so signed should not be set aside with costs, and why the award made between the parties should not be set aside on the ground that the arbitrator had exceeded his authority by ordering judgment to be signed in the action, and also that the award did not finally decide the matters referred by adjudicating with sufficient certainty on the right to the property in dispute in the action.

Montague Smith now shewed cause. It is sought to set aside this award on the ground that the arbitrator exceeded his authority in directing judgment to be entered up in the action for the lessor of the plaintiff, and that, assuming him to have had no power to do this, the award is bad for want of finality, on the ground that it contains no sufficient adjudication upon the right to the property in dispute in the action. With regard to the first objection, the cases of *Jackson v. Clarke*, 13 Price, 208, and *Hutchinson v. Blackwell*, 8 Bing, 331, will probably be cited on the other side. No doubt those cases go the length of deciding that the arbitrator has no power to direct a verdict to be entered where there has been no verdict found by a jury subject to the reference. But it may perhaps still be fairly questioned whether the law is so, for in *Cartwright v. Blackworth*, 1 Dowl., 489, *Littledale, J.*, appears to have entertained a different opinion, and to have thought that a direction to enter up a verdict for a given sum was equivalent to an order that the defendant should pay that sum to the plaintiff. But however that may be this case is a very different one from those which have just been referred to, because here the arbitrator does not find a verdict at all,—what

he does is to direct that a judgment shall be entered up. This it is submitted he had ample authority to do. The cause had proceeded to issue, and was then referred to him, and he was called upon to adjudicate upon the matters in difference in the cause. The very thing, so far as the cause is concerned, which he had to determine was, whether or not the plaintiff was entitled to recover in the action the property in respect of which that action was brought, that is to say, whether or not it was just and right that the plaintiff should recover a judgment in the action which he had brought. Surely it cannot be contended that the arbitrator had not, in the discharge of his duty, authority finally to determine and fully to carry out the object of the action, by directing the necessary judgment to be signed. But secondly, even supposing the arbitrator in this instance to have done what he had no power legally to do, the fact of his having improperly directed judgment to be entered up will not necessarily vitiate the award. It may be a reason why the judgment itself should be set aside, but it is no ground for setting aside the award, if it can be shewn that the award is in other respects sufficiently final and conclusive. Now it is submitted with confidence that that can be shewn here; the words "under the same judgment" in that part of the award which directs the recovery by the plaintiff of the land in question, may be rejected as surplusage, and if this be done the award will contain with sufficient certainty a direction that the plaintiff shall recover from the defendant a particular piece of land, specifically described and set out by metes and bounds. Now this direction is sufficiently definite to be enforced by attachment, to which the defendant will be liable after a demand of possession, if he refuses to give up the land. It may be that the award in this respect is informal; but that makes no difference if the court can see with sufficient certainty that the adjudication is final, and capable of being enforced by attachment. The recent case of *Cook v. Gent*, 13 Melv., 364, is an authority in support of this position. There the court held that a direction that a verdict should be entered for the plaintiff was in substance a finding for him, and they refused to set aside the award for uncertainty and want of finality.

Lush, contra. No valid distinction can be taken between a direction by the arbitrator to enter a verdict and a direction by him to enter up a judgment. It is therefore clear that that part of the award which directs the judgment to be entered up is bad, and that the defendant is entitled to have this judgment set aside. That being so, it is equally clear that the award is not final and conclusive; for the words "under the same judgment" which are of the essence of the adjudication, cannot be rejected as surplusage, and if all which relates to the judgment be struck out, there will be no decision at all upon the matters referred to the arbitrator. It is clear that the whole of his award upon this judgment is based upon the

judgment, and that the judgment is the only adjudication upon it. But even if the words "under the same judgment" could be rejected, it will not help the plaintiff, because the direction that the plaintiff shall recover must still be held to have reference to a recovery in the action, and a recovery in the action can only be obtained through the medium of a judgment. *Doulan v. Brett*, 2 Ad. & Ell., 344. Besides, the award cannot be divided in the manner suggested on the other side, as is clear from the recent case of *Hawkyard v. Greenwood*, 2 D. & L. 936.

Wightman, J. It is, I think, quite clear that the arbitrator had no authority to direct judgment to be entered up in the action; and the rule must therefore be absolute for setting aside the judgment signed under the award. But with regard to the rest of the award, I do not see anything to prevent my upholding it, if I can see that it is sufficiently final and conclusive. *Hawkyard v. Greenwood*, 2 D. & L. 936, has indeed been referred to by Mr. Lush as an authority against my right to do this; but I do not think that case is in point, because there the costs of the cause were to abide the event of the award, which is not the case here. My only doubt is as to whether there is a sufficient adjudication on the matters in dispute, if you reject the direction to enter up judgment. This is a question of very great nicety, but I think, upon the whole, that the words "under the same judgment" may be rejected as surplusage; and that if you reject the words, the award does contain a sufficient adjudication in favour of the plaintiff, and one which may be enforced by attachment. I do not, therefore, think I ought to deprive the plaintiff of his right to try the validity of this award by action or motion for an attachment. The rule will therefore be discharged, except as to the setting aside of the judgment, for which purpose alone it may be made absolute.

Rule accordingly.

Common Pleas.

Elliott v. The Overseers of St. Mary Within, Cumberland; *Busher v. Thompson*; and *Gale v. Chubb*. Michaelmas Term, Nov. 11, 1846.

PRACTICE.—DELIVERY OF PAPER BOOKS.—REGISTRATION APPEAL.

In registration appeals, the delivery of the paper books is a matter entirely within the discretion of the court, and where they had not been delivered to the judge's clerks four days before the first day of hearing the appeals, the court allowed the delivery of them nunc pro tunc, there appearing, from the position of the particular appeals in the list, to be sufficient time before they could be heard, and where the appeal stood fourth in the list, it was ordered to be put at the bottom.

In the first of the above cases, *Pearson*, on behalf of the appellant, applied for leave to de-

liver the requisite paper books to the judges' clerks, although the four days previous to the first day appointed for the hearing of the appeals had been allowed to pass. Thursday the 12th instant was the first day fixed for the hearing, and the appellant's attorney had been unable to ascertain that fact until Saturday last, and did not deliver the paper books until yesterday. The appeal, however, could not be heard on the first day, as it stood 20 in the list, and the respondent was a consenting party. *Croucher v. Browne*, Lutw. Reg. Ca. 303.

By the Court.—The consent of the respondent did not at all alter the case. The paper books were entirely for the convenience of the judges, and quite within their discretion, and as there appeared to be some time before the appeal was likely to be heard, the court would grant the application.

In the second of the above cases, *Stock* made a similar application on behalf of the appellant, and stated that the attorney had been under the impression that the paper books would be in time if delivered on the fourth day before the actual day of hearing, and not the first day appointed, on which latter day, as the present appeal stood 9th in the list, the hearing was not likely to take place.

By the Court. The application is rather too late; but as on to-morrow (the first day of hearing) the court would sit only for a part of the day, the application might be granted.

The same application was made in the third of the above cases by *E. S. Richards*. He stated that the paper books had been delayed through unavoidable circumstances, and that the appeal stood 4th in the list.

By the Court. The paper books may be delivered *nunc pro tunc*, but the case must be put at the bottom of the list.

Applications granted.

THE SMALL DEBTS ACT.

NOTICE OF PROCEEDINGS.

THE *Gazette* of the 22nd inst. contains a notice of the intention of the Privy Council to consider the propriety of making orders for carrying this act into effect in every county throughout England and Wales.

LEGAL OBITUARY.

Sept. 24, 1846.—At Boa Vista, Cape Verde Islands, Henry William Macauley, Esq., Her Majesty's Commissioner in the court established in that island under the treaty with Portugal, for the suppression of the slave trade.

Nov. 23.—Joseph Heath, late of Settle, Yorkshire, solicitor, admitted on the Roll, Trinity Term, 1834.

Nov. 30.—Arthur Greville, of Sun Court, Cornhill, solicitor, admitted on the Roll, Easter Term, 1826.

Dec. 1.—Henry Francis, of Maize-Hill, Greenwich, and Monument Yard, London, solicitor, aged 70, admitted on the Roll, Michaelmas Term, 1798.

Dec. 6.—James Williams Buchanan, of Nuneaton, solicitor, aged 53, admitted on the Roll, Easter Term, 1824.

Dec. 7.—Daniel French, barrister-at-law, aged 72, called to the Bar by the Hon. Society of Lincoln's Inn, 9th Feb. 1808.

Dec. 15.—John Barney, of Fareham, and late of Southampton, solicitor, one of the magistrates of the county, admitted on the Roll, Hilary Term, 1805.

Dec. 19.—Crews Dudley, of Oxford, solicitor, aged 66, admitted Hilary Term, 1811.

NOTES OF THE WEEK.

MEETING OF PARLIAMENT.

At the Privy Council held at Windsor Castle, on Saturday the 19th inst., a proclamation was ordered to be issued, directing parliament to assemble for "*the despatch of business*," on Tuesday the 19th of January next.

Our readers must be prepared for the early introduction of some important measures of Law Reform,—though it has been supposed that the government will have but little time to spare from great political and party questions, for any real improvement in the administration of justice.

THE BENCHERS OF THE INNER TEMPLE.

The judges, acting as visitors, have come to a resolution, that Mr. Hayward has no legal claim, as of right, to be elected to the bench; but they pronounce an unanimous opinion, that the mode of election, by which a single dissident may exclude, is unreasonable, and strongly advise the adoption of some better mode.

NEW OFFICIAL ASSIGNEE.

Mr. Cannon has been appointed one of the official assignees in the Court of Bankruptcy, in the room of Mr. Alsager, deceased, with the understanding, that if it should be deemed expedient to reduce the number of official assignees, his appointment is not to be considered permanent, nor is he to be entitled to any compensation.

MASTERS EXTRAORDINARY IN CHANCERY.

From Nov. 24th, to Dec. 15th, 1846, both inclusive, with dates when gazetted.

Brock, Benjamin, jun., Carmarthen. Dec. 15.
Cowper, William John, Newbury. Dec. 15.
Dufty, Richard, Nottingham. Dec. 4.
Footitt, Christopher Carter, Newark-upon-Trent Nov. 27.
Hodgson, Charles Bernard, Carlisle. Dec. 4.
Laing, Arthur Louis, Colchester. Dec. 4.
Shaw, Richard, jun., Burnley. Dec. 8.
Wratislaw, Charles Edward, Rugby. Dec. 4.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Nov. 24th, to Dec. 15th, 1846, both inclusive, with dates when gazetted.

Baker, George Leake, Charles Baker, and Francis James, 52, Lincoln's Inn Fields, Attorneys and Solicitors. Nov. 24.
Bridgman, Christopher Vickry, and Edward Henry Scobell, Tavistock, Solicitors and Attorneys. Nov. 27.
Curry, Philip Finch, Henry Heathcote Statham, and Francis Horner, Liverpool. Solicitors and Attorneys. Dec. 8.
Plucknett, James, and Richard John Roberts, 17, Lincoln's Inn Fields, Attorneys and Solicitors. Nov. 24.
Wright, Thomas Samuel, and Robert Frederick Welchman, Southam and Leamington Priors, Attorneys and Solicitors. Dec. 8.

THE EDITOR'S LETTER BOX.

It has been suggested by an esteemed correspondent, that if we wish for an authority in support of our opinion expressed at page 144, *ante*, as to allowing a charge for perusing abstract, it will be found in *Drax v. Scrope*, 1 Dowl. 69, where it appears, that Taunton, J., considered the solicitor would be to blame if he did not peruse the abstract. The same case is reported in 2 B. & Ad. 581, but not the same point; it seeming that the counsel against the solicitor abandoned that part of the case. The solicitor's charge for perusal was nearly 50*l.*; counsel and clerk, 57*l.* 15*s.*

We are obliged to F. for his observations regarding the Legal Almanac. We are glad that the improvements meet his approbation. His further suggestion shall be attended to.

The letter of "A Special Pleader" is acceptable on the subject of the Insolvent Acts, and shall appear next week. In the meantime he refers "G. H." to the case of *Toomer v. Gingell*, decided in the Common Pleas, Trinity Term, 1846, and reported 15 Law Journ. N. S. 255.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JANUARY 2, 1847.

“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

COMMENCEMENT OF PROCEEDINGS UNDER THE SMALL DEBTS ACT.

WE briefly noticed last week that an announcement had just appeared in the *London Gazette* of the intention of her Majesty, with the advice of her Privy Council, to take into consideration the propriety of making orders for the purpose of putting THE SMALL DEBTS ACT into execution in every county throughout England and Wales.

This being the first step under this very important act, we shall state the terms of the “notice,” in order that its sufficiency may be ascertained. It is as follows:—

“At the Court at Windsor, the 19th day of December, 1846;

“Present—The Queen’s most excellent Majesty in council.

“Whereas by an act, passed in the last session of parliament, entitled, ‘An Act for the more easy recovery of small debts and demands in England,’ it is, among other things, enacted that it shall be lawful for her Majesty, with the advice of her privy council, to order that the said act be put in force in such county or counties as to her Majesty, with the advice aforesaid, shall seem fit, and to divide the whole or part of any such county, including all counties of cities, and counties of towns, cities, boroughs, towns, ports, and places, liberties and franchises therein contained or thereunto adjoining, into districts; and to order that the county court shall be holden for the recovery of debts and demands, under the said act, in each of such districts; and to declare by what name and in what towns and places the county court shall be holden in each district; and if it shall appear to her Majesty that any part of any county, liberty, city, borough, or district, may conveniently be declared within the jurisdiction of the county court of an adjoining

county, it shall be lawful for her Majesty, with the advice aforesaid, to order that such part shall be taken to be within the jurisdiction of the county court holden for the purposes of the said act for such adjoining county in and for such district as her Majesty shall order, in like manner as if it were part of such adjoining county:

“And whereas by the said act it is also enacted, that it shall be lawful for her Majesty, with the advice of her privy council, to order that any court, holden for the recovery of small debts or demands within the provisions of any act cited in either of the schedules annexed to the said act, and marked A. and B. respectively, shall be holden as a county court, and to assign a district to every such court either greater or less than the district in which the court, holden under the provisions of any such act, has jurisdiction, and to alter the place of holding any such court, or to order that any such court be abolished:

“And whereas by the said act it is also enacted, that any order in council, made for the purposes of the said act, shall be published in the *London Gazette*, and notice of the intention of her Majesty to take into consideration the propriety of making any such order shall be published in the *London Gazette* one calendar month at least before any such order shall be made; and whereas her Majesty has been pleased this day to refer the consideration of the said act, and of the orders which it may be proper to make for the purposes thereof, to a committee of the Lords of her Majesty’s most honourable privy council, and to direct that said committee do report their opinion thereupon to her Majesty.

“Notice is hereby given, that, after the expiration of one calendar month, from the date of the publication of this notice in the *London Gazette*, her Majesty, with the advice of her privy council, will take into consideration the propriety of making orders for the purposes of the said act, and for putting the said act in execution in every county throughout England and Wales.”

We confess, that after reading the full recitals of the act contained in this State Paper, we were much disappointed at the meagreness of the notification with which it concludes. Her Majesty, by the 1st section, with the advice of her Privy Council, may from *time to time* order the act to be put in force in *such county or counties* as from *time to time* shall seem fit; and the act is to extend to those counties concerning which *any such order* shall have been made, and not otherwise or elsewhere. The 2nd section provides, that the whole or part of any county may be divided into districts; and the 5th section authorizes orders to be made regarding the one hundred and odd courts in schedules A. and B., and to assign their districts.

Then the 8th section provides that *any order* in council made for the purposes of this act shall be published in the London Gazette. "And notice of the intention of her Majesty to take into consideration the propriety of making *any such order* shall be published in the London Gazette one calendar month, at least, before *any such order* shall be made."

We venture to say that no one reading these clauses (the 1st, 2nd, and 8th,) had any conception, that instead of taking county by county, or district by district, and "from time to time" making an order for *each* county or district,—a notice would be given of "taking into consideration the propriety of making *orders* for putting the act into execution *in every county* throughout England and Wales,"—all under one and the same notice, without any specific distinction.

Some few weeks ago a circular was copied into the *Times* newspaper, purporting to be written by an officer of government to the clerks of the peace, containing a list of towns (*except in Middlesex*) at which the Small Debts Courts were proposed to be holden. This was not an official announcement, and nothing whatever has publicly appeared to show the result of the inquiries or suggestions made by the clerks of the peace. No doubt those respectable county officers (chiefly engaged in criminal justice) were very proper persons to address; but we opine that others might also with advantage have been consulted. On the part of the profession generally, we are bound to protest against the course which has been thus pursued. Looking at the promise of due notice given by the 8th section of the act, we think the government has been ill

informed and worse advised of the judicious course of proceeding.

The legislature, in requiring a month's notice—not of the order—but of the *intention* "to take into consideration the propriety of making any such order,"—must evidently have intended to afford any one interested therein an opportunity of being heard before the Privy Council, either with objections, or suggested alterations, or modifications. How is this now to be effected? When will the scheme, with regard to the county of Middlesex, come on? When that of Yorkshire? and when of Lancashire? and so on with the rest of the 52 counties. They cannot all be heard the same day. The explanation is, we suppose, that the public is not to have any voice in the matter whatever. But, if so, surely the enactment of a distinct clause, providing for a month's notice of considering any such order, is a mere delusion.

We say this, supposing that—however objectionable in regard to propriety and fair dealing—the mode of constituting the courts is *strictly legal*; but it is seriously questioned, whether such a vague and general notice as that contained in the Gazette is a sufficient compliance with the requirements of the statute.^a

It may be imagined, that as we strenuously opposed many important parts of the measure during its progress in parliament, and have animadverted on several of its defects and evils since it passed, we may be somewhat prejudiced against the present course of proceeding; we shall therefore avail ourselves of the critical remarks of Mr. Moseley in the first part of his treatise.^b We resort to this authority with more confidence from the evident interest which the learned author must have in upholding these Small Debt Courts,

^a When these small debt courts shall be in full play, suppose 52 causes were entered for trial, (with or without juries, and with or without advocates,) will it be the practice of the officer of court to give notice in a newspaper, that on a certain day they will all be tried, or will the plaintiff or his attorney, (if there be one), or the bailiff, be required to serve each of the defendants with a notice of the specific day of trial? This Gazette-notice seems to be a specimen of the wholesale ease and simplicity with which the proceedings are to be conducted.

^b A Treatise on the Law of the New County Courts, compiled from the stat 9 & 10 Vict. c. 95, and the common law applicable thereto. By Joseph Moseley, Esq., Barrister-at-Law. London: Stevens & Norton, 1846.

upon the merits of which he has already written an elaborate treatise bearing on all the inferior courts, and has now entered with evident zeal into the consideration of the principles and rules of practice by which the new courts are to be governed.

From the enactments down to the 8th section, inclusive, Mr. Moseley observes, it would appear that the power of the creation of the new courts is vested in the Privy Council.

"Strictly speaking, however, the council have only the power of calling the courts into existence, rather than of creating them. For although the council have power of ordering courts to be held, and of determining the extent of their jurisdiction as to place, and certain other powers over them, yet it is clear that they have little or no authority in forming and fashioning the courts themselves, or the jurisdiction or proceedings thereof, which have been otherwise provided for by the statute, and where that is silent will be determined by the common law. And as this power with which the privy council is invested, like all powers in law, must be duly followed up in the form and manner prescribed, and be exercised only by those to whom it is given, or else all the proceedings under it will be void, and the parties acting by it liable for any damage occurring thereby." And therefore, as the power is delegated to her Majesty with the advice of her privy council, any irregularity in the council itself, as if it were not duly formed, would render any orders made by it void.

"Among other forms prescribed by the statute to be observed in the formation of the New County Courts, is that by the 8th section, by which a month's notice is to be given in the London Gazette before any order can be made, so that if an order be made on any matter requiring an order, whereof such due notice has not been given, such order will be void, because the council had no authority to make the order. And as by the words of the act 'every order made in council for the purpose of the act shall be published in the London Gazette, and notice of the intention of her Majesty to take into consideration the propriety of making any such order shall be published in the London Gazette one month at least before such order shall be made,' it would appear not only that notice of taking into consideration the ordering the court to be held must be given, but also a notice of every material fact which is to take place respecting such holding of the court, requiring an order of the council. As of the dividing the county into districts, of declaring parts of one county within the jurisdiction of the county court of another, of where the court is to be held and for what district, for all these facts can only be done by order in council, and no order is to be made without notice. So

that it would appear the notice in the Gazette must set out everything that will be necessary for the creation of the court and the jurisdiction respecting which it is made, and for which the order of the council is necessary, or otherwise the order will be bad and all proceedings under it void. At least this is what the statutory enactments would appear to amount to, though of course this at present can be but matter of opinion. But there is no reason why notice of everything for which an order in council is likely to be required may not be given in the first instance, for if not required they can do no harm, and time will be saved. And if any material point for which an order is required, as an alteration of the district, or of the place of holding the court, is omitted, there must, no doubt, be a month's notice before such order can be made."

Such are the doubts and difficulties suggested by a competent and apparently impartial writer. It seems probable that he has drawn correct conclusions. It is, at all events, possible that he may have done so; and though the small courts themselves may go on in spite of the warning, the time may come when the interests or obstinacy of a litigant may impugn the validity of the constitution of the court, and appeal to the judges of Westminster Hall, who will assuredly decide the question (uninfluenced either by party or policy) according to the strict rules of legal construction.

There is, however, yet time to amend the notice, and we trust it will be amended, and time given to consider the orders to be made in each county or district *seriatim*.

LAW OF LANDLORD AND TENANT.

EXEMPTION FROM DISTRESS.

THE law of landlord and tenant, with its ramifications, necessarily affects large sections of the community; but, perhaps, of all the laws relating to property, that which enables a landlord to enforce the payment of rent by distress involves in its operation the most comprehensive variety of interests.

The general rule is, that all moveable chattels found upon the land chargeable with a distress are *prima facie* liable to be distrained by the landlord for rent due to him in respect of the premises, whether the goods be the property of the tenant or of a stranger. To this rule certain exceptions have been established, some for the benefit of trade or husbandry, and

some for the preservation of the peace. There are five descriptions of things which at common law are not distrainable:^a—1. Things annexed to the freehold. 2. Things delivered to a person exercising a public trade, to be carried, wrought, worked, or managed, in the way of his trade or employ. 3. Cocks and sheaves of corn. 4. Beasts of the plough and instruments of husbandry. 5. The instrument of a man's trade or profession. The three first classes were absolutely exempt from distress: the two last were only protected when there was a sufficient distress without taking them. Exceptions have been also engrafted on the rule, with respect to two other classes of things not falling within the exemptions already enumerated, viz.:—Chattels in actual use, or in the actual possession and presence of the owner himself—an exemption intended to prevent a breach of the peace—and the instruments of conveyance of goods privileged from distress, or brought to a public market or fair there to be sold.^b

The second head of exemption above specified—that with respect to things delivered to a person exercising a public trade, to be carried, wrought or managed in the way of his trade or business—is that to which the decisions of the courts of law in modern times are chiefly referrible. The earliest instances to which the exception was applied were, with regard to innkeepers, smiths, tailors, fullers, weavers, and millers; but the exemption was extended within the last half century to the cases of factors,^c wharfingers,^d auctioneers,^e and carcase butchers,^f and by a very recent case, as we shall see, to commission agents.^g The ground of this exemption is explained by *Parke, B.*, in *Muspratt v. Gregory*. “The principle of the exemption is the public good; that is, that all men may freely and without interruption or danger of the loss of their goods, deal with those who carry on trades or businesses for the benefit of all indis-

criminately, or buy or sell in fairs or markets, and thus supply themselves with the commodities of life.” It was deliberately determined in the case last cited, that the principle of exemption ought not to be extended. In that case the boat of the plaintiff, an alkali manufacturer, was lying in a cut or canal for the purpose of receiving and carrying away salt bought by him for the purposes of his manufacture, when she was seized for a distress for the arrears of a rent charge arising out of the premises, and a majority of the Court of Exchequer held, (*Parke, B., dissentiente*,) that she was not privileged from distress, which decision was subsequently affirmed by a Court of Error.^h The doctrine authoritatively recommended by the Court of Error in *Muspratt v. Gregory* is, that the principle of exemption already laid down in the books ought not to be carried further. In all the subsequent cases, therefore, the burthen is cast upon the party claiming exemption of showing that the case upon which his claim is founded is, ‘by fair analogy, comprehended within some class of circumstances to which the exemption contended for has already been conceded. In *Youle v. Jackson*,ⁱ which was an action by a brewer to recover the value of casks sent to a public-house with beer, and left there according to the custom of that trade, until the beer was consumed. It appeared that when the casks were distrained some of them were empty and one full, and the jury found, that if the distress were allowed, the trade of a brewer could not be carried on. The case was said in argument to resemble in principle that in which goods sent to an auctioneer to be sold on premises occupied by him were held to be privileged from distress;^k but the Court of Exchequer considered that the case of *Muspratt v. Gregory* was much nearer, and that they were bound by that decision, and could not extend the exemption to the case of brewers’ casks. On the other hand, where a piece of velvet which had been sent by a silk manufacturer to the house of a silk weaver for the purpose of his trade was distrained for rent, the Court of Queen’s Bench, in conformity with the older authorities, as well as with the modern cases of *Wood v.*

^a *Simpson v. Hartopp*, Willis Rep. 512.

^b Per *Alderson, B.*, in *Muspratt v. Gregory*, 1 Mees. & W. 633; Tyr. & G. 1086.

Gilman v. Elton, 3 B. & B. 75; 6 Moore, 243.

^d *Thompson v. Mashiter*, 1 Bing. 283; 8 Moore, 254.

^e *Adams v. Grave*, 1 Cr. & M. 380.

^f *Brown v. Steirle*, 2 Ad. & El. 138; 4 Nev. & M. 277.

^g *Findon v. M'Laren*, 6 Q. B. 891.

^h 3 Mees. & W. 677.

Mees. & W. 450.

^k *Adams v. Grave*, 1 C. & M. 380.

Clarke,¹ and *Brown v. Shevill*,^m decided in favour of the exemption.

As already intimated, the last reported case is that of *Findon v. M'Laren*,ⁿ in which a cab was sent to a commission agent that he might expose it for sale and sell it in the way of his business. Whilst on the commission agent's premises the cab was taken for a distress for rent, and in answer to an action of trover by the owner of the cab, it was insisted that the case did not fall within any of the recognised exemptions, and that *Muspratt v. Gregory* decided that the principle of exemption should not be extended. The Court of Queen's Bench, however, unanimously held that the case was not distinguishable in principle from that of the auctioneer before cited, and that the purpose for which the cab was placed with the commission agent brought the case within the exemption.

Another decision of the Court of Queen's Bench recently reported,^o with regard to exemption from distress, although referrible to a different class of cases, and involving distinct principles, may be conveniently noticed here. In that case a tenant owing half a year's rent petitioned the Insolvent Debtors' Court, under the stat. 1 & 2 Vict. c. 110, inserting in his schedule the rent so due as a debt. The landlord appeared at the Insolvent Court and opposed the tenant, who ultimately obtained his discharge after confessing a judgment to the provisional assignee, under the 87th sect. of the act. The landlord subsequently distrained goods purchased by the insolvent after his discharge, for the rent previously due. The question was, whether the landlord could, after the discharge of the tenant under the Insolvent Debtors' Act, distrain for rent due before the discharge, and which was mentioned in the insolvent's schedule? The Court of Queen's Bench, after taking time to consider, pronounced in favour of the landlord, upon the ground that the rent itself was not extinguished, although the remedy by action might be barred, and that the remedy by distress was incidental to rent service, quite independent of other remedies, and remained, notwithstanding the discharge of the tenant under the insolvent acts, except so far as those acts ex-

pressly restrained it. The court also observed, that there was a perfect analogy between a discharge under the bankrupt acts and a discharge under the insolvent acts, and that it had already been decided in two cases,^p that the discharge of the person of the tenant under the bankrupt acts does not take away the right of distress. The law on this point, both as regards bankrupts and insolvents, may therefore be said to be now deliberately settled.

POINTS OF PLEADING.

DECLARATION FOR BREACH OF PROMISE OF MARRIAGE.

ACTIONS for breach of promise of marriage do not very frequently furnish any materials for the exercise of the pleader's ingenuity, and seldom involve any legal questions for the consideration of the court; the struggle at *nisi prius* in cases of this description being generally limited to the question of damages, which falls peculiarly within the province of a jury to determine. It is somewhat singular, therefore, that the opinion of the Courts of Queen's Bench and Exchequer, respectively, should have been taken upon declarations in this action, raising precisely the same point during the same term, as stated in the last number of Dowling and Lowndes' Reports.^q

The declaration in the case reported alleged, that in consideration that the plaintiff promised to marry the defendant, the defendant promised to marry her, and that she continued unmarried, and was ready and willing to marry the defendant, but that the defendant married another person. To which the defendant pleaded, that he was not at any time requested to marry the plaintiff. This plea was demurred to, on the grounds that it traversed a matter not alleged in the declaration, and raised an immaterial issue.

It appeared to be conceded in the course of the argument that the plea was bad for the reasons stated in the special demurrer. The question was, whether the declaration was good. The contention was, that the declaration ought to have alleged a request to marry, or that a reasonable time had

¹ 1 Cr. & J. 484; 1 Tyr. 314.

^m 2 Ad. & E. 138.

ⁿ 6 Q. B. 891.

^o *Phillips v. Shervill*, 6 Q. B. 944.

^p *Biggs v. Sowry*, 8 M. & W. 729; *Newton v. Scott*, 9 M. & W. 434, affirmed on error, in Exchequer Chamber, 10 M. & W. 471.

^q *Short v. Stone*, Q. B., H. T., 1846; *Caines v. Smith*, 3 D. & L. 462.

elapsed since the making of the promise; otherwise it was said it did not clearly appear from the declaration that there had been any breach. Com. Dig. tit. Covenant (E. 3) was cited, where it is said—"If a man does an act which by consequence may be a breach, if the breach does not actually follow, the covenant is not broken." On the other hand it was insisted, that as the defendant had put it out of his power to marry the plaintiff by marrying another person, there was no obligation on the plaintiff to allege a request.

The court considered that, putting a reasonable construction on the declaration, it disclosed a sufficient breach of the contract; and it was said by *Pollock, C. B.*—"If a man contract to deliver goods at a certain time, and before that time arrives, either destroys the goods, or does any other act which puts it out of his power to deliver them, there is no occasion to request him to deliver them; "and as to the absence of any allegation that a reasonable time after the making of the promise had elapsed, it was said, that the court could not presume that the plaintiff's wife would die before the expiration of a reasonable time, or in the lifetime of her husband. the presumption was rather in favour of the existing state of things. It was also remarked, that the defendant having pleaded over, the objection to the declaration was only such as might be taken upon general demurrer. Upon these considerations, the judgment was for the plaintiff.

SHORT NOTICES OF NEW BOOKS.

Stamp Laws.

A TREATISE on the Stamp Laws of Great Britain and Ireland, being an Analytical Digest of the Statutes and Cases; with Practical Observations thereon: together also with a Table of Stamp Duties payable throughout the United Kingdom, &c. &c. By Hugh Tilsley, Assistant Solicitor of Stamps and Taxes. London: Stevens & Norton, 1847. Pp. xxii. 892.

This is a very complete and valuable Treatise on the Stamp Laws, comprising not only the statutes but the cases decided thereon, conveniently arranged and ably digested. We shall take an early opportunity of advertising fully to the scope and contents of the work.

Ecclesiastical Courts Practice.

The Practice of the Ecclesiastical Courts, with Forms and Tables of Costs. By Henry

Charles Coote, Proctor in Doctors' Commons &c. &c. London: Butterworth, 1847. Pp. 966.

This work was much needed, and from a general view of it, we think it has been ably executed. Though our readers for the most part cannot practise in these courts, it is desirable they should be acquainted with the course of proceeding in them; and we shall shortly describe the result of Mr. Coote's labours.

Costs.

The New Book of Costs in the Superior Courts of Common Law at Westminster, including the Crown and Queen's Remembrancer's Offices; also, in Bankruptcy, the Court for Relief of Insolvent Debtors, in Conveyancing, and miscellaneous matters. Containing, also, the last Directions to the Taxing Officers upon the Lower Scale. By Ed. Thos. Dax, of the Exchequer Office, Gentleman. London: Owen Richards, 1847. Pp. xx. 532.

This book will be of great service to all the practitioners in common law and bankruptcy. It has been compiled under an authority that ensures the accuracy of its contents.

Small Debt Courts.

The Practice of the Courts under the 9 & 10 Vict. c. 95, for the Recovery of Small Debts in England, with Notes, Comments, and Decisions on Analogous Statutes. By John Jagoe, Esq., Barrister-at-Law. London: Stevens & Norton, 1846. Pp. 144.

The notes of Mr. Jagoe are useful and judicious.

The New County Courts Act, 8 & 9 Vict. c. 95, for Debts, Damages, Replevin, &c., with Notes, critical and explanatory; including Decisions in the Courts of England and Ireland on Statutes bearing similar Enactments. By Henry Udall, of the Inner Temple, Esq., Barrister-at-Law. London: Stevens & Norton, 1846. Pp. 127.

This book has already been noticed at pp. 31 and 61, *ante*.

A Treatise on the Law of the New County Courts. Compiled from the Statute of 9 & 10 Vict. c. 95, and the Common Law applicable thereto. By Joseph Moseley, Esq., Barrister-at-Law. London: Stevens & Norton, 1846. Pp. vii., 136, lix.

Mr. Moseley has given an elaborate exposition of this act, and has thrown much light upon the course of proceeding to be adopted under it, which he has collected from the various authorities on the ancient county courts. See page 195, *ante*.

Criminal Law.

Clinical Facts and Reflections; also, Remarks on the Impunity of Murder in some cases of presumed Insanity. By Thomas Mayo, M. D., F. R. S., &c. &c. London: Longman & Co., 1847. Pp. 217.

This work contains many able and interesting observations on several recent trials, in which the accused escaped conviction and punishment, on account of the plea of insanity.

Miscellaneous.

The Modern Orator. The most celebrated Speeches of the Earl of Chatham, the Right Hon. Richard Brinsley Sheridan, the Right Hon. Lord Erskine, and the Right Hon. Edmund Burke. London: Aylott & Jones, 1847. Pp. 868.

This is a well-chosen collection of the most celebrated speeches of Earl Chatham, Mr. Burke, Mr. Sheridan, and, "though last, not least in our affection," of Lord Erskine. From one of Erskine's unrivalled speeches concerning a member of the profession, we hope to find room for a future extract.

The Horatii. A Tragedy. By J. Hornsby Wright, Gent., Attorney-at-Law. London: Smith, Elder, & Co., 1846. Pp. 85.

The members of the profession have rarely time or inclination to "build the lofty rhyme," and the received opinion is, that the less they engage in such structures the better for their professional prosperity. Nevertheless, we cannot but welcome the effusions of such of our brethren as are enabled to intermingle poetical with legal lucubrations. Mr. Wright, who seems meritoriously to rejoice in his honourable vocation of an attorney-at-law, has chosen a well-known classical subject, and wrought out the historical incidents and portrayed the passions of his *dramatis personæ*, with force and judgment.

NEW STATUTES, EFFECTING ALTERATIONS IN THE LAW.

On looking over the volume of the Public General Statutes of the last session, we find a few short acts bearing on the law or its administration, which are not included in the collection we have already submitted to our readers, and we therefore now add them.

ASSIGNMENT OF ECCLESIASTICAL PATRONAGE.

9 & 10 VICT. c. 88.

An Act to remove Doubts as to the Legality of certain Assignments of Ecclesiastical Patronage. [26th August, 1846.]

3 & 4 Vict. c. 113. *Proceedings under the Augmentation Acts and Church Buildings Acts to be deemed lawful.* 1 G. 1, st. 2, c. 10; 8 & 9 Vict. c. 70.—Whereas by an act passed in the 3 & 4 Vict. c. 113, intituled "An Act to carry into effect, with certain Modifications, the

Fourth Report of the Commissioners of Ecclesiastical Duties and Revenues," it is enacted, "that it shall not be lawful for any spiritual person to sell or assign any patronage or presentation belonging to him by virtue of any dignity or spiritual office held by him, and that every such sale or assignment shall be null and void to all intents and purposes; and doubts have been entertained whether or not certain agreements and proceedings authorized under the several acts for the augmentation of the maintenance of the poor clergy, or under the Church Building Acts, are to be deemed sales or assignments prohibited by the first-recited act; and it is expedient that such doubts be removed: Be it declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That no agreement or other proceedings touching any advowson or patronage, or right of presentation or nomination of any spiritual person to any cure or benefice, donative, or perpetual curacy, or to serve any church or chapel authorized by an act passed in the 1 G. 1, c. 10, intituled "An Act for making more effectual Her late Majesty's gracious Intentions for augmenting the Maintenance of the Poor Clergy," or by any act passed for the Amendment thereof, or by an act passed in the last session of parliament, intituled "An Act for the further Amendment of the Church Building Acts," or by any act recited therein, is or shall be deemed a sale or assignment such as is prohibited by the first-recited act; but that every such agreement or proceeding already or hereafter to be duly made and taken under the provisions of any of the said acts is and shall be deemed to have been from the time of the making thereof as good in law to all intents and purposes as if the first-recited act had not been passed.

UNCLAIMED SOUTH SEA DIVIDENDS.

9 VICT. c. 8.

An Act to make further Provisions as to unclaimed Stock and Dividends of the South Sea Company. [30th March, 1846.]

1. 7 & 8 Vict. c. 80.—24 G. 2, c. 2.—*Notice to be given by advertisement before re-transfer of stock or payment of dividends exceeding 20l. is made to any claimants. Contents of notice.*—Whereas by an act passed in the 7 & 8 Vict. c. 80, intituled "An Act for completing the Guarantee Fund of the South Sea Company, for advancing for the Public Service of the unclaimed Stock and Dividends in the Hands of the said Company, and for regulating the Allowance to be paid for the Management of the South Sea Stock and Annuities," provision is made for transferring all capital stock of the old and new South Sea annuities, and of the annuities created under the provisions of an act passed in the 24 G. 2, c. 2, intituled, "An Act for granting to His Majesty the Sum of

Two million one hundred thousand Pounds, to be raised by Annuities and a Lottery, and charged on the Sinking Fund, redeemable by Parliament," and managed by the said company, upon which no dividends shall have been demanded for the period of ten years or upwards, and the balances of sums issued for paying the dividends and principal sums invested in such annuities which shall not have been demanded for the same period to the commissioners for the reduction of the national debt, and by the said act provision is made for enabling parties entitled thereto to procure a re-transfer of such stock and payment of the dividends due thereon; and it is necessary to make further provisions in relation thereto: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That no re-transfer of any capital stock exceeding the sum of twenty pounds shall be made from the account of the said commissioners, under the authority of the said first-recited act to any persons or person, nor shall payment be made under the authority of the said first-recited act, or of this act, of any dividends or dividend exceeding twenty pounds in the whole, until three calendar months after application shall have been made for the same, nor until such notice shall have been given thereof as the said governor, sub-governor, or deputy-governor of the said company is hereinafter authorized to require; and it shall be lawful for the said governor, sub-governor, or deputy-governor to require the person or persons making such application to give such public notice, by advertisements in one or more newspapers circulating in London and elsewhere, as the said governor, sub-governor, or deputy-governor shall think fit; and every such notice shall state the name, description, and addition of the person in whose name the unclaimed stock or dividends stood when transferred to the said commissioners, and the amount thereof, and the name of the claimant, and the time at which such re-transfer or payment will be made, if no other claimant shall sooner appear and make out his claim; and when and so often as any such stock shall be directed to be transferred or such dividends to be paid by any order of the high Court of Chancery, such notice shall also state the purport or effect of such order.

2. *Application may be made to Court of Chancery to rescind order for transfer of stock or payment of dividends.*—That it shall be lawful for any persons or person at any time before the actual re-transfer of any such capital stock or annuities, or before payment of any such dividends to any such claimant as aforesaid, to apply to the Court of Chancery, by motion or petition, to rescind, alter, or vary any order made for such transfer or payment.

3. *Lords of Treasury may authorise inquiries into the circumstances of unclaimed stock and dividends.*—*Payment of expenses, &c.*—That it shall and may be lawful to and for the lord

high treasurer or the commissioners of her Majesty's treasury for the time being, from time to time and at any time, to authorise and empower the said governor, sub-governor, or deputy-governor to inquire into and investigate the circumstances of any stocks or dividends remaining unclaimed for the time being, with a view to ascertain the owners thereof, and to allow to the said governor, sub-governor, or deputy-governor, such compensation as to the said lord high treasurer or the commissioners of her Majesty's treasury shall seem just, for their trouble and expenses to be incurred in and about such inquiries and investigation, and also from time to time to allow to the said governor, sub-governor, or deputy-governor a reasonable compensation for all costs and expenses to be incurred by him in and about the notices and advertisements hereby directed, and other the services required or authorised by this act, which compensation may be deducted rateably from the stocks and dividends to be from time to time re transferred or paid, and with reference to which such trouble, costs, and expenses shall have been incurred and such services performed respectively, or the same may be paid by the said commissioners for the reduction of the national debt out of the stocks and dividends to be received by them under and by virtue of the said first-recited act or this act, and which shall not be claimed.

4. Dividends payable to commissioners not liable to taxes.

5. Interpretation clause.

SELECTIONS FROM CORRESPONDENCE.

INSOLVENTS' FUTURE PROPERTY.

SIR,—The question raised by your correspondent G. H. in your number of Dec. 19, has already been decided, in the case of *Toomer v. Gingell*, C. P., T. T. 1846, 15 Law Journ. N. S. 255. It was there held, that an order for protection made under 7 & 8 Vict. c. 96, protects the insolvent's person only, and not his after-acquired property;—and a plea of defendant's protection by a final order was held bad on general demurrer.

The 7 & 8 Vict. (as supposed by G. H.) does not vest the after-acquired property in the assignees; for the interpretation clause (s. 73) expressly defines the "property" to mean "all the present real and personal estate, &c. of the petitioner, (&c.) and all the future estate, right, &c. of such petitioner in or to any real or personal estate, &c. which such petitioner may purchase, or which may revert, descend, be devised or bequeathed, or come to him before he shall have obtained the final order, and all debts due or to be due to such petitioner before he shall have obtained such final order."

It would seem, indeed, that in the case above referred to, *Maule, J.*, considered that it was still in the power of the assignees to claim the

after-acquired property, as under 5 & 6 Vict. c. 116, s. 9; but his Lordship does not appear to have adverted to the interpretation clause.

Of course the postponement of the making of the final order (under 7 & 8 Vict. c. 96, s. 27,) would extend the period during which all their acquired property may be claimed by the assignees.

Perhaps it was considerations of this sort that have induced many insolvents to pass through the Insolvent Debtors' Court on the old system, under 1 & 2 Vict. c. 110, (as alluded to by you at p. 146.)

SPECIAL PLEADER.

JOINT-STOCK COMPANIES.

With respect to the query of another correspondent, (*Inquirer*,) p. 159, it is clear that in the absence of express provisions in the Act of Incorporation, the member of a company incorporated by statute, (or by charter,) is not individually liable to creditors of the company, their only remedy being against the corporate property. (See 3 Stephen's Comm. 175, also 173; Lee's Dict. Pr. tit. "Corporation.") This is the fundamental distinction between corporations and incorporated joint-stock companies, or ordinary partnerships. (See Wordsworth p. 3; 3 Steph. Comm. 181; *Edmunds v. Brown*, 1 Lev. 257; Broom's Parties to Actions, 2nd ed., p. 172 d.)

There may, however, be cases where equity would hold the individual members liable, (see 2 Vernon, 396; Bac. Abr. tit. "Corporations" (F. 15).) As to administration of the funds in equity, see Story's Equity Jur. s. 1252.

In case of a joint-stock company completely registered under 7 & 8 Vict. c. 110, (which is a corporation by virtue of that act, s. 25), and not having a separate character or act of incorporation, the shareholders are made individually liable. See sections 66, 25.

By the Companies Clauses Consolidation Act, 8 & 9 Vict. c. 16, s. 36, the shareholders in companies incorporated by subsequent statute adopting this act, will be liable to executions on judgments against the company to the amount of their shares not paid up.

SPECIAL PLEADER.

ATTORNEY AND CLIENT.—ADMISSION OF HAND-WRITING.

To the Editor of the Legal Observer.

SIR,—

Your columns appear peculiarly adapted to the following statement, on which we humbly request your sentiments, or those of your correspondents.

A., an advertising agent of a railway company, brought an action against B., a professional committee man; B. pleaded the general issue; in order to establish B's liability it was necessary to prove B's handwriting to his letter, requesting to have his name placed on the list as one of the provisional committee.

The proper application was made to defendant's agent to admit, which being refused, the usual order for costs of proof in any event was obtained.

The plaintiff's attorney thereupon sent the original letter to an attorney in Lancashire with directions to show the letter to the defendant's attorney, and serve him with a subpoena to prove it was defendant's hand-writing if he could do so. The defendant's attorney thereupon said he could prove the letter to be in the hand-writing of his client, the defendant, and accepted the subpoena. The cause being about to be tried at the sitting after last term in London, the defendant's attorney had notice to attend under his subpoena; he did so, and on his arrival he told the plaintiff's attorney the letter was in his client's hand-writing, but would not consent to a judge's order to admit.

A verdict was found for the plaintiff, the defendant's attorney on the trial admitting his client's hand-writing, and the judge made the usual order for the costs of proof.

Immediately after the trial the defendant's attorney applied to plaintiff's attorney for his expenses, amounting to between 20*l.* and 30*l.*, as the costs of his attendance to prove his own client's hand-writing, which he had refused to admit. The plaintiff's attorney paid the demand and took a receipt, stating the sum paid to be for his (the witness's) attendance as a witness to prove the defendant's hand-writing.

We mention no names, hoping, that if the defendant's attorney is in error, he is so merely from want of due consideration.

Ought not the defendant's attorney, immediately after he was shown his client's letter on being served with the subpoena, to have instructed his agent to admit his client's hand-writing?

Ought he to have taken from the plaintiff's attorney the costs of his attending to prove it, he at the trial admitting it?

Ought he not to return to the plaintiff's attorney immediately the sum he received for his attendance as such witness, (although his client the defendant is bound by judge's order to pay the costs of such proof?) His attendance for such proof being wholly unnecessary if he had admitted what he was to be called to prove, and which at the trial he did admit without proving. He was a witness for no other purpose.

B. B.

"THE LAW CLERKS' LITERARY AND SCIENTIFIC INSTITUTION."

It is proposed that this institution be named "*The Law Clerks' Literary and Scientific Institution*." That the members pay a quarterly subscription, to be agreed upon at a public meeting; for which they will have the use of a reading-room and library; free attendance at all the lectures and classes for instruction in various branches of useful learning. There

may be a few extras; say for tuition in French and German.

It is also proposed to make an appeal to the heads of the profession for their support and assistance to the proposed undertaking; and that as soon as may be, a public meeting of the law clerks be convened, at which some gentlemen of influence in the profession be invited to preside; and that at such meeting a committee be appointed to carry out the resolutions adopted at the meeting; and that a treasurer and secretary be also appointed at such meeting; and all other steps be taken which shall be deemed necessary to secure success to this undertaking.

[We think this plan much better, at all events to begin with, than others we have seen of a more ambitious character. We have made a slight alteration in the paper sent to us, which we suggest will be desirable, at least for the present. We shall gladly add our names to the list of subscribers.—*Ed.*]

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRINCIPLES OF EQUITY.

[IN our last number, p. 178, *ante*, we gave the Digest of all the Cases decided in the Courts of Equity (including those of Lord Chancellor Sugden) bearing on the Law of *Property and Conveyancing*. Those decisions of course included many of the *principles* by which the Courts of Equity are guided. We now proceed to the classification of the other cases also bearing on the Principles of Equity. This sub-division, in pursuing the plan of comprehending within each section some complete department of the Digest, will no doubt be acceptable to our subscribers. Here, by half-an-hour's reading each week, they will find *posted up* under each general head all the decisions of all the courts which bear upon the several parts of the Law and Practice.]

ACQUIESCENCE.

Although mere silence during the dealing with an estate, against which a claim exists, is not sufficient to bar the claimant, yet when a person claiming to be exonerated by an estate, had been referred to by a purchaser and had not mentioned his claim, and had omitted to make it in a suit in which he might have done so, and ineffectually attempted to enforce it in another suit, and had acted as if liable to the demand from which he sought exoneration, he was held barred. *Boyd v. Belton*, 8 Ir. Eq. Rep. 113.

Case cited in the judgment: *Govett v. Richmond*, 7 Sim. 1.

ADMINISTRATOR.

Notice of debt.—In the administration of assets in a court of equity a debt for arrears of rent has priority over simple contract debts; but an executor or administrator will not be personally responsible for payment of simple contract debts in priority to a debt for arrears of rent of which he has no notice. *Clough v. French*, 2 Coil. 277.

Case cited in the judgment: *Thompson v. Thompson*, 9 Price, 464.

ADMINISTRATION OF ASSETS.

Judgment.—A joint judgment against two cannot be proved under a decree to account in a suit instituted to administer the real assets of the consor who died first; the surviving consor not being a party to the suit as such. The case does not fall within the 28th General Rule of March, 1843. *Hatchell v. Sutton*, 2 J. & L. 21.

See *Executor*.

AGENT.

Vendor and purchaser.—In order to set aside a conveyance by a principal to his agent, it is not necessary to prove that the property was sold at an undervalue; and though an agent may purchase from his principal, he must make a full disclosure of all the knowledge which he himself possesses with respect to the property. If there be underhand dealing, *ex. gr.*, a purchase in the name of another person, however good the price, or fair the transaction in other respects, it has no validity in a court of equity. *Murphy v. O'Shea*, 8 Ir. Eq. Rep. 329.

ANNUITY.

1. *Executor.*—*A.* as principal and *B.* as surety joined in granting an annuity for the life of *C.*, and *A.* assigned to trustees a policy of insurance upon his own life, upon trust to permit *C.*, after the death of *A.*, out of the money insured, or the interest thereof, to receive the annuity. And *A.* and *B.* executed their joint and several bond conditioned to secure the punctual payment of the annuity. The executors of *A.* received the amount of the policy and invested it upon government securities. The executor of *B.* was compelled to pay *C.* an arrear of the annuity. *Held*, that, as against the general assets of *A.*, the executor of *B.* was not entitled to interest on the money so paid by him; but that he was entitled, as against the sum insured and the interest thereon, to be put in the same situation as if it had been duly applied in payment of the annuity, and therefore to be repaid thereout the money advanced by him, with interest. *Caulfield v. Maguire*, 2 J. & L. 141.

Case cited in the judgment: *Copis v. Middleton*, Tur. & R. 224.

2. *Arrears.*—*Abatement.*—Gift of an annuity of 300*l.* to the testator's three daughters and the survivors or survivor, with a gift over to the last survivor of the sum set apart to an-

swer the annuity. After the death of one of the daughters the fund set apart was lost by the misconduct of the trustee, and the annuity remained unpaid for the rest of the lives of the other two; but after their death a sum of money, forming part of the residue, but of less amount than the original fund, becoming available, *Held*, that such sum was to be apportioned rateably between the arrears due to the two surviving daughters respectively at the time of the death of that one of them who died first, and the sum originally set apart, and which belonged to the last survivor. *Innes v. Mitchell*, 1 Phill. 710.

ARREARS OF RENT.

Devisee.—A leasehold farm subject to a non-alienation clause, was assigned to the testator, in consideration of paying arrears of rent due, and an annuity to the vendor: the landlord refused to accept the testator as tenant, and he was never in possession. He died leaving the arrear due, and purported to devise the farm to the plaintiff, who was in possession, it did not appear how, and transferred his interest,

therefore never his debt; but *semble*, if the landlord had accepted him, the devisee would have been entitled. *Morres v. Morres*, 8 Ir. Eq. Rep. 325.

ASSIGNMENT.

See *Legacy*.

BOND.

See *Priority*.

CHATTEL REAL.

Exoneration of Judgment.—Where a judgment debtor was possessed of a chattel and seised of a freehold estate, both of which descended to his son, a minor, who made a will as to both, which passed the chattel, but the freehold descended to his heir-at-law, and the devisee afterwards sold the chattel. *Semble*, that the heir could not claim to have the freehold exonerated from the judgment by the chattel.

A written acknowledgment to the creditor by the owner of a freehold subject to a judgment will not deprive the owner or the personal estate of the original debtor of the benefit of the Statute of Limitations.

Amendment of the minutes of a decree in a matter for which the party should have been ready at the hearing will not, in general, be allowed; but in this case an amendment, as to costs, was allowed under peculiar circumstances. *Boyd v. Belton*, 8 Ir. Eq. Rep. 113.

COMPOSITION DEED.

Lien.—Where a composition deed between a debtor and his creditors provides, that those who come in under it shall thereby release their debts, a lien creditor cannot realise his

lien and prove for the difference; but if he elects to take the benefit of the deed, must first give up the property on which he claims the lien. *Buck v. Shippam*, 1 Phill. 694.

CONTRACT.

Time, essence of.—The purchaser cannot, owing merely to the delay of the vendor in complying with his requisitions, determine the contract without notice, or bring an action for his deposit before the termination of his notice, where time was not originally of the essence of the contract. Whether he can do so after the expiration of the notice, where time has not been made of the essence of the contract, or, being of the essence of the contract, has been waived, depends upon the conduct of the vendor after notice. *Wood v. Machee*, 5 Hare, 158.

CREDITOR.

Cestui que trust.—The plaintiff was attorney for T. and H. in two actions brought by them against Sir H. G. and his son. P. owed 3000*l.* to another son of Sir H. G. The actions were compromised on the terms mentioned in the

debt; and that T. and H. should accept a security for the 1,000*l.* on estates in Tipperary of another member of the G. family, who was indebted to P., and a collateral security by mortgage of P.'s own property; and that it was agreed that P. should pay T. and H.'s costs of the actions, amounting to about 400*l.*, and that the same should be secured by his bills, and collaterally by the last-mentioned mortgage: and recited mortgages of the Tipperary property for 1,000*l.* to X., in trust for T. and H., and of P.'s property for 1,400*l.* to H.; and that the 1,400*l.* secured by the latter was intended as a further security for the sum secured by the mortgage to X., and for the costs of T. and H., and of getting X.'s mortgage to X., and for the costs of T. and H., and of getting X.'s mortgage executed; and it was declared that H. should be possessed of the 1,400*l.*, on trust—first to better secure the 1,000*l.* to X.; 2ndly, to secure to the plaintiff, described as "E. S., gentleman, attorney for the plaintiff in said actions," the costs of them, 100*l.* to be paid in three months, and the rest after taxation; and 3rdly, the expenses of executing X.'s mortgage. The plaintiff was not a party, and did not execute the deed. P. gave a promissory note to T. and H. for 100*l.*, which they indorsed to the plaintiff, and P. paid. The rest of the costs not being paid, the plaintiff filed the bill to recover them by enforcing the trusts of the deed. *Held*, that he was not a *cestui que trust*, and could not sustain such a bill. The cases to which the doctrines of *Garrard v. Lauderdale*, 2 R. & M. 451; S. C. 3 Sim. 1; and *Ellison v. Ellison*, 6 Ves. 656, are respectively applicable, defined and discussed.

An order to take the bill *pro confesso* against one defendant only establishes the facts stated against him and those claiming under him, but any point of law arising on the facts is still open. *Simmonds v. Pallas*, 8 Ir. Eq. Rep. 335.

And see *Trust*.

DEVISEE.

See *Arrears of rent*.

ELECTION.

The effect of election against a will is to give the property which was devised to the party electing to the devisees appointed by the election, and it never goes as if undisposed of by his will. *Hamilton v. Jackson*, 8 Ir. Eq. Rep. 195.

See *Tregonwell v. Sydenham*, 3 Dow. 194.

EXECUTOR.

1. *Neglect of investment*.—Mere neglect of duty in an executor, as, for instance, the omission to invest balances pursuant to a direction in the will, if unaccompanied by fraud, is not such misconduct as to disentitle him to the general costs of a suit for the administration of the estate, although it may subject him to the costs of so much of the suit as was occasioned by such neglect. *Heighington v. Grant*, 1 Phill. 600.

Cases cited in the judgment: *Flanagan v. Nolan*, 1 Molloy, 84; *Travers v. Townsend*, ib. 495; *Raphael v. Boehm*, 11 Ves. 92; 15 Ves. 590; *Tobbs v. Carpenter*, 1 Madd. 290.

2. *Administration suit*.—In April, 1843, a creditor obtained a judgment by default against an executrix. A decree in a creditor's suit was obtained in April, 1844, and on the 25th of May following, the judgment was set aside on the terms of the executrix pleading *plene administravit*. On the 3rd of June, on the eve of trial, the executrix moved for an injunction, which the court granted, to stay execution only, and afterwards refused to permit the creditor to proceed against the executrix for the purpose of charging her personally. *Kirby v. Barton*, 8 Beav. 45.

3. *Interest*.—*Mixed balance at bankers*.—An executor held chargeable with interest upon certain sums which he retained and mixed with his own monies at his banker's, the same being retained out of the income of the testator's residuary estate, in order to satisfy a debt which there was probable ground to believe was due to the testator's estate from a person entitled to a share of such income, but which turned out not to be due to the extent supposed. *Melland v. Gray*, 2 Coll. 295.

4. *Payment into court*.—*Retainer*.—The court will not order an executor to pay into court money, which he states, by his answer, to have retained in satisfaction of a debt due to him from the testator. *Middleton v. Poole*, 2 Coll. 246.

See *Annuity*.

FORGED TRANSFER OF STOCK.

A sum of stock was standing in the name of

a testatrix, which her executors overlooked, and the dividends remaining unclaimed, the stock was transferred to the national debt commissioners. Afterwards, one Sanders procured a probate in the name of T. Hunt, of a forged will of the testatrix, and obtained a transfer. Held, that the probate did not authorise a payment to Sanders, and that a party giving faith to the probate was bound to see that the person claiming under it was a real T. Hunt.

Under the above circumstances, a transfer from the aggregate fund in the name of the commissioners was ordered to be made to the real executor. Costs out of the fund. *Jolliffe, ex parte*, 8 Beav. 168.

Cases cited in the judgment: *Allen v. Dundas*, 3 Term Rep. 125; *Digby v. Wray*, 3 Bac. Abr. 51.

INTEREST.

A party recovered payment at law, but on equitable grounds, repayment was decreed: Held, that the plaintiff was also entitled to interest on the amount recovered from the time of its payment. *Young v. Guy*, 8 Beav. 147.

JOINT-STOCK COMPANY.

1. *Sale of shares by director to the company*.—One of the members of the committee of management of a joint-stock company sold his shares to the committee, on behalf of the company, at a price not exceeding the market price of the shares at that time. The shares were transferred to the trustees in trust for the company, and the vendor thenceforward ceased to interfere in their affairs. Three years after, it was known to the shareholders generally that the shares had been sold to the company, the company having during that time continued the business, and having obtained new parliamentary powers, the plaintiff, on behalf of himself and all the shareholders in the company, filed his bill against the vendor to set aside the sale and transfer of the shares as fraudulent, and to obtain contribution from the vendor toward the debts of the company. The court refused to disturb the sale, and dismissed the bill, with costs. *Walford v. Adie*, 5 Hare, 112.

2. *Liabilities*.—Declaration of various liabilities incurred by directors of a joint-stock company in respect of the acts of their co-director. *Benson v. Heathorn*, 2 Coll. 309.

3. *Provisional committee*.—*Charge on deposits*.—*Trustee and Cestui que trust*.—*Solicitor and client*.—The solicitor who had projected, and at his own expense brought forward, a scheme for making a railway, entered into an agreement with the persons who became the provisional committee for prosecuting the undertaking, that the costs and expenses should be paid by such solicitor and projector, and that the members of such provisional committee should not be personally liable to him for such costs and disbursements, but that the same should be paid out of the fund to arise from the deposits to be paid on the shares:

Held, that this agreement was not illegal as between the provisional committee and the shareholders, regarded as trustee and *cestui que trust*, inasmuch as the trustee was entitled to be indemnified by his *cestui que trust*, in respect of the costs and expenses properly incurred. *Parsons v. Spooner*, 5 Hare, 102.

See notes on this case, p. 123, *ante*.

JOINT-STOCK BANK.

1. *Mortgage of shares.—Liability to the bank debts.*—Transfer, by way of mortgage, of shares in a banking company. The mortgagee afterwards paid off the debt, and applied for a re-transfer of the shares, but the directors of the bank did not permit the transfer to be made. In the meantime, a creditor recovered judgment against their public officer, and threatened execution against the mortgagee, as one of the shareholders: *Held*, that where the mortgage was made simply as an absolute transfer, subject to redemption, and nothing had passed binding the mortgagor to take a re-transfer of the shares, the mortgagor was not liable to indemnify the mortgagee against debts incurred after the transfer made on the mortgage, and before the mortgage debt was paid off. That the mortgagor, having elected to take a re-transfer of the shares, the mortgagee became a trustee of the shares of the mortgagor, and the mortgagor was bound to indemnify him against the whole expenses or liabilities which he had properly incurred by holding and maintaining the shares. That the mortgagor, indemnifying the mortgagee in respect of the costs, was entitled to take proceedings in the name of the mortgagee, to compel a re-transfer of the shares, and to resist the proceedings against the shareholders under the judgment: *Semble*, the mortgagee has not, in such a case, any right at law against the mortgagor: *Quære*, whether the directors of the company, preventing the shares from being transferred, are necessary parties to the suit, in order to give the plaintiff complete relief. *Phené v. Gillan*, 5 Hare, 1.

Case cited in the judgment: *Humble v. Langston*, 2 Rail. ca. 533.

2. A joint-stock banking company stopped payment. Certain of the shareholders, who afterwards obtained the management of the affairs of the company, contributed, in proportion to the number of shares held by them, to a common fund, which was to be applied for the protection of the contributors, in payment of the debts of the bank; and they called on all the shareholders to contribute to this fund. Some did not, and, for the purpose of carrying out the object of the contributors, an arrangement was entered into between them and a creditor of the company, that the creditor should obtain judgment against the company, to be used against such of the shareholders as the contributors should select. Accordingly, a creditor obtained a judgment by confession against the public officer, and, at the instance of the contributors, issued a *sci. fa.* against the plaintiff, who had been a shareholder, but,

before the contract upon which judgment had been obtained was entered into, had, by informal transfers, assigned his shares to a trustee for the company. This transaction is fraudulent, in the view of a court of equity; and the creditor was restrained proceeding at law against the plaintiff.

The 6 G. 4, c. 42, does not prevent or interfere with the *bond fide* retirement from the co-partnership of any member; and the company may buy out a partner notwithstanding the act. Where a transfer of shares is made by a member to the company, the latter may, as between the parties to the transfer, dispense with the machinery which the legislature has rendered necessary to transfers in general; and the company cannot afterwards, as between themselves and the partner with whom they contracted, impeach the transaction: *Semble*, 1. That a person who, *de facto*, is a partner, and who appears to be so on the books of the co-partnership, and whose name is registered as such, cannot discharge himself of his liability to creditors by showing that the transfer to him was informally executed.

2. That the registry of the name of the plaintiff after the bank had stopped payment, as a partner "concerned in the co-partnership, as the same appears on the books of the company," was not authorised by the act, even at law; where he had ceased to appear on the books for seven years, and his name had been withdrawn from the register, and no new contract had been entered into with him, but entries merely had been made that the transfers by him were invalid. *Taylor v. Hughes*, 2 J. & L. 24.

Case cited in the judgment: *Const v. Harris*, 1 T. & R. 518; *Cheltenham Railway case*, 2 Rail. ca. 728.

JUDGMENT.

See *Administration of Assets; Chattel interest*.

JURISDICTION.

Trust fund.—A sum of money was lodged in a bank in the names of trustees, in trust to manage the same during the minorities of A. and B., in such manner as the trustees should think fit for their benefit, and to pay the principal in equal shares on their respectively attaining 21. A. and B. attained 21, and one of the trustees being out of the jurisdiction, and having declined to act, a petition was presented that the other trustee might transfer the fund to A. and B. There was no evidence of the trust, save the statement in the petition and verifying affidavit: *Held*, that the court had no jurisdiction to order the transfer of the fund. *Dunbar, in re*, 8 Ir. Eq. Rep. 71.

LEASE.

See *Principal and Agent*.

LEGACY.

Assignment.—A party entitled to, or taking by assignment a legacy, or share of a residuary estate, may institute a suit for the administra-

tion of such estate at any time before the complete administration of the assets, or before such legacy or residuary share is withdrawn from its position as assets unadministered, and constituted a trust fund applicable to the specific trusts of the will; but, *semble*, where the right is unnecessarily exercised, the court may make the decree without costs. *Cufe v. Bent*, 5 Hare, 24.

Cases cited in the judgment: *Howe v. Lord Dartmouth*, 7 Ves. 137.

LIEN.

Ship. — Underwriter. — *A's* ship damaged *B's*. *B.*, after he had received a sum of money under a policy which he had effected on his ship, brought an action against *A.*, and recovered damages for the injury done to his ship: *Held*, that the underwriter had a lien, on the amount recovered, for the sum paid on the policy. *White v. Dobinson*, 14 Sim. 273.

See *Randal v. Cockran*, 1 Ves. 98; *Blauput v. Da Costa*, 1 Eden. 130.

And see *Composition Deed*.

LUNATIC.

1. *Semble*.—A man labouring under a delusion, which may at any moment be brought forth, if the subject of it be alluded to, though in other respects he is perfectly rational, is in law insane, and a jury would not be justified in finding that he enjoyed a lucid interval, though at the time he is not under the influence of the delusion, if there be a tendency to its recurrence.

It is not necessary, to constitute a lucid interval, that the subject thereof should be restored to as vigorous and active a state of intellect as he might have enjoyed previously to the visitation of the lunacy. *Creagh v. Blood*, 8 Ir. Eq. Rep. 434.

Cases cited in the judgment: *Attorney-General v. Panther*, 5 Bro. C. C. 441; *Holyland, ex parte*, 11 Ves. 11.

2. *Serving bill.*—Whether a party of unsound mind can be proceeded against by service of copy bill—*quære*. *Pemberton v. Langmore*, 8 Beav. 166.

MORTGAGE.

See *Joint-stock Bank*.

PARTNERSHIP.

1. *A.*, *B.* and *C.* agreed to enter into a joint speculation in tea. One consignment only was made by *A.* to *B.*, which was paid for by *C.* Disagreements arose respecting it, *B.* and *C.* insisting that it was a spurious article, and repudiating the consignment: *Held*, that the partnership relations were not put an end to by the repudiation: that the rights, obligations, and liabilities could not be settled by any simple litigation at law between any two, and that the matter formed the proper subject of a suit in equity.

A bill, under the above circumstances, insisting on the repudiation, and in the alternative asking to have the accounts taken, and the rights &c. of the parties determined, *Held*

not demurrable on the ground of the inconsistency of the alternative relief.

There are, necessarily, things to be done preparatory to the commencement of a partnership, and matters necessary to be done after its termination for the purpose of winding it up. These are not to be excluded in the consideration of the partnership dealings and transactions. *Cruikshank v. M'Vicar*, 8 Beav. 106.

2. Agreement for a partnership decreed to be specifically performed by the execution of a proper partnership deed.

Partners may make constant variations in the terms of their partnership agreement, which may be evidenced not only by writing but by their conduct.

Injunction granted to restrain a partner during the partnership term, from carrying on business with other persons in the name of the old firm, and from publishing notices of dissolution. To a bill for specific performance of a partnership, one defendant objected to the misconduct of another partner, who was a co-defendant: *Held*, that this defence could only be made available upon cross bill. *England v. Curling*, 8 Beav. 129.

3. Decree for a dissolution of partnership, on the ground of insanity, as from the date of the decree. *Sauder v. Sauder*, 2 Coll. 276.

See *Besch v. Frolick*, Phil. 172.

4. After a dissolution of partnership by death or otherwise, the surviving or continuing partners of the firm are (in a suit against them by persons claiming to be creditors of the partnership) entitled to the Statutes of Limitation, although, as between themselves and retired partners, or the estates of deceased partners, the partnership accounts are unsettled; and the retired partners, or the executors of a deceased partner, are in such a suit entitled to the like protection. *Way v. Bassett*, 5 Hare, 68.

5. Acts done by one of the surviving partners, who was executor of the deceased partner, and which the surviving partners were in that character bound to do, cannot *prima facie* be considered to have been done in the character of executor. *Way v. Bassett*, 5 Hare, 55.

6. A creditor of a partnership, against whose debt the estate of a deceased partner is in a suit directly instituted against that estate entitled to the protection of the Statute of Limitations, cannot (on a bill against the surviving partners and the representatives of the estate of the deceased partner, alleging that the surviving partners are indebted to the deceased partner,) to recover his debt against the separate estate of such deceased partner, on the ground of the equity of the partners amongst themselves to enforce an adjustment of the partnership transactions; for the creditor can, at the utmost, only stand in the place of the surviving partners as against the estate of the deceased partner, and in such a case the surviving partners have no claim on the estate of the deceased. *Way v. Bassett*, 5 Hare, 55.

Cases cited in the judgment: *Wilkinson v. Hen-*

derson, 1 Myl. & K. 582; Braithwaite v. Britain, 1 Keen, 206; Winter v. Innes, 4 Myl. & Cr. 101.

PARTITION.

Arbitration.—Two persons, equally entitled to certain unenclosed slobes, agreed to allot certain parts thereof to each of them, in severalty, and to refer it to arbitrators to award what portions of the unallotted slobes should be allotted to each of them for owelty of partition. *Held*, that the insufficiency of the unallotted slobes to compensate one of the parties for deficiency of his part of the allotted lands arising from a matter which occurred subsequently to the arrangement between them, but which was in their contemplation at the time, did not give him an equity to have compensation out of the lands allotted to the other party. *Dimsdale v. Robertson*, 2 J. & L. 58.

PRINCIPAL AND AGENT.

Lease.—An agent with authority to receive rents wrote to his principal immediately before the expiration of a lease, stating the acreable rent which he thought would be obtained for the estate and desiring the principal to send him a power of attorney to let it. The principal, in his answer, did not object to the agent's letting, and stated that he would "send the power of attorney to follow this" as soon as he could get it. There were subsequent acts of recognition, though they were afterwards retracted. *Held*, a sufficient authority to the agent to let the estate. *Dyas v. Cruise*, 8 Ir. Eq. Rep. 407.

PRIORITY.

Bond debt.—A debtor conveyed real and personal estate to a trustee for sale, with a declaration that the proceeds of the sale should be applied by the trustee in satisfaction and discharge of the several debts and sums of money mentioned in the schedule to the conveyance, "and now remaining justly due and owing" by the debtor to the persons named in the schedule, "according to the priority, nature, and specialty of such debts respectively." *Held*, upon the construction of the whole instrument, that a bond-debt mentioned in the schedule, with interest, (the principal and interest not exceeding the penalty of the bond,) was payable in priority to a simple contract debt mentioned in the schedule. *Passingham v. Selby*, 2 Coll. 405

RECEIVER.

1. **Surety.**—Proceedings were commenced on the common law side of the Court of Chancery against the surety of a receiver, to compel the payment of the balance ordered to be paid to the plaintiff. The surety paid the amount to the solicitor prosecuting the proceedings, and then applied to have his recognizance vacated. The petition was served on the plaintiff, who did not appear. The court refused to make the order, but directed the plaintiff to be served with a notice that the order would be made on a given day, unless the plaintiff showed cause

to the contrary. The plaintiff not then appearing, the order was made. *Mann v. Stennett*, 8 Beav. 189.

2. A receiver had been accustomed to bring in his accounts very irregularly in point of time, and thereby the actual balances in his hands never clearly appeared. He was specially ordered to bring in his accounts before a given day in every year, accompanied with an affidavit showing the actual balance in hand: inquiries were also directed as to his former balances, and he was ordered to pay the costs of the application. *Bertie v. Lord Abingdon*, 8 Beav. 53.

3. In *sci. fa.* on a receiver's recognizance, the replication assigned as breaches, that the Master's certificate found a certain balance in his hands, and that by two orders of Dec. 1843, that balance was directed to be lodged and invested in two several parts, which had not been done. The rejoinder stated that the Master's certificate directed part of the balance to be applied pursuant to an order of 1841, which was other and different from those mentioned in the replication, and the rest to be invested, and that the Master had power to make, and the receiver was bound to obey that certificate. The facts were, that the directions in the certificate and order of 1841 had not been obeyed, and side-bar rules were entered to enforce them, in which only the time allowed was different, and which were the orders mentioned in the replication. The rejoinder was taken off the file as frivolous and filed for delay. *Reg. v. Beatty*, 8 Ir. Eq. Rep. 132.

RENT.

Agreement to reduce.—An agreement for the reduction of rent presumed from the receipt of the reduced rent, which was consistent with the recital in a settlement, though during the greater part of the period a tenant for life received the rent, and the reduction held to extend to the entire interest, which was an estate for lives and a term of years in remainder, and not to be confined to the estate for lives. *Enrught v. Haughton*, 8 Ir. Eq. Rep. 274.

SHIP.

See *Lien*.

SOLICITOR.

See *Joint Stock Company*.

TENANT FOR LIFE.

Parties entitled in remainder.—*Income of residue.*—Devise and bequest of residuary real and personal estate to trustees, upon trust, with all convenient speed to sell the real estate, and such part of the personal estate as was in its nature saleable, but the mode and time of sale and of settling and adjusting accounts and of requiring payment of what should be due to the testator to be left entirely to the discretion of the trustees; and until such sale and the final adjustment of his co-partnership accounts, the rents and income of the real and personal estate remaining unsold, and the interest of any debt or debts owing to the testator, to be

paid to the same persons and in the same manner directed with respect to the income of the estate when invested. The testator gave the produce of his real and personal estate to his two daughters for their lives, with remainder over; and he recommended each of his two daughters to pay 25*l.* a year out of her moiety of his estate for the education and maintenance of his nephew until the nephew attained 21 years.

Held, that, (there being no improper delay in the conversion of the estate,) the daughters of the testator, as tenants for life, were entitled to the income actually produced by the residuary estate during the interval before the sale or realization of the whole of such estate, and the investment thereof according to the directions in the will; but that they were not entitled, during that interval, to any interest upon such parts of the residuary property, or on the value of such parts thereof as were unproductive. That the two sums of 25*l.* were only to be allowed by the daughters to the nephew yearly out of their income during their lives, and that such sums did not constitute a charge upon the life interests of the daughters for the whole period of the minority of the nephew. *Mackie v. Mackie*, 5 Hare, 70.

TRUSTEE.

1. *Out of jurisdiction*.—Stock was vested in the names of two persons, upon trust, as was alleged, for the petitioners. The only evidence of the trust was the statements in the petition and verifying affidavits, and a letter written by the donor for the purposes of the application. One of the alleged trustees being resident in some place unknown, out of the jurisdiction, a petition was presented, praying that the stock might be transferred to the petitioners; but the court refused to make the order in his absence, though it was stated that he declined to act, and the other trustee submitted to act as the court shall direct. *Dunbar, in re*, 2 J. & L. 120.

2. *Creditor's deed*.—*A.* having purchased, but not paid for, a parcel of hops, which remained in the possession of *B.*, the seller, subject to his lien for the purchase money, assigned his effects to trustees for the benefit of his creditors who should signify their assent to the deed and send in an account of their demands within three months from the date. *A.* informed *B.* that he had assigned his effects for the benefit of his creditors; and thereupon, *B.* wrote to the trustees for an authority to sell the hops; and, after some correspondence had passed between them, in the course of which *B.*, as he said, signified his assent to the deed, the trustees gave the authority, and *B.* sold the hops, but for much less than was due to him, and then claimed to be paid a dividend, under the deed, on the balance remaining due to him. *Held*, that his claim was not sustainable. *Bush v. Shipman*, 14 Sim. 239.

Cases cited in the judgment: *Cullingworth v. Lord*, 2 Beav. 385; *Leicester v. Rose*, 4 East, 372.

3. *Retaining debt*.—A trustee of real estates sold for payment of the testator's debts is entitled to retain a debt due to him from the testator out of the proceeds; and his right is not prejudiced by the proceeds having been paid into court. *Hall v. McDonald*, 14 Sim. 1.

4. *Banker's accounts*.—Bankers, under the circumstances of the case, decreed to refund monies which had been drawn by a trustee from a trust-account standing in their books, and placed to the credit of the trustee's private account at the bank, upon the balance of which latter account the bankers were creditors. *Pannell v. Hurley*, 2 Coll. 241.

5. *Loan*.—*A.* having lent *B.* 1,000*l.*, without taking any security for it, states to *C.* and his family that the money had been held by him (*A.*) in trust for *C.* Afterwards, *B.* becoming embarrassed in his circumstances, and unlikely to repay the money, *A.*, at the urgent solicitation of *C.*, gives the latter his promissory note for the amount. Subsequently *B.* dies insolvent, and without having repaid the money. Then *A.* dies. In a suit for the administration of *A.*'s assets, (there being no evidence to rebut the trust:) *Held*, that *C.* may prove the note against *A.*'s estate as a valuable security. *Burkitt v. Ransom*, 2 Coll. 395.

6. Two trustees were authorised to invest trust money in their names "on good security;" one trustee improperly invested 1,500*l.* on mortgage of leaseholds, in his own name; the other had declined to act any longer. The security realised 215*l.* only. The trustee was, on motion, ordered to pay the difference into court. *Bourne v. Mole*, 8 Beav. 177.

7. *Gift when complete*.—A partner in a bank opened an account in one of the books of the firm, which was headed as follows:—"Dr. Mrs. *L. S.* (the name of his wife) for the education of Bryan, Lavinia, Herman, and Robert S. (the names of his infant children) Cr." And he caused an accountable receipt to be signed by his co-partner on behalf of the firm, purporting to be for 800*l.* received from his wife for the education of his children, and that sum to be placed to the credit of the account so opened, and his private account with the bank was debited with it: *Held*, that the transaction was a complete and irrevocable declaration, in trust in favour of the children. *Stapleton v. Stapleton*, 14 Sim. 186.

Case cited in the judgment: *Wheatley v. Parr*, 1 Keen, 551.

8. *Specific performance*.—*Costs*.—Upon a bill for specific performance, the court thought that it would press too severely on the defendants, who were mere trustees, to make a decree. The court held, that in dismissing the bill, it had no authority to give the plaintiff his costs.

If, through the exertions of a plaintiff, the court is enabled to distribute a fund or make a declaration of rights necessary for an administration, then, although the plaintiff may fail in his claim, the court will not permit the other parties to carry off the fruit of his exertions,

without defraying his costs out of the fund. *Wedgwood v. Adams*, 8 Beav. 103.

9. *Limitation to separate use.—Breach of trust.*—Where the trustee of a fund settled on a husband until insolvency, and then to the separate use of his wife, at the urgent solicitations of the wife committed a breach of trust by lending part to the husband, and he became insolvent, whereupon the wife claimed the whole fund: *Held*, that the trustee was responsible to her, as during the husband's estate she could not bind the remainder to her separate use. It is no answer to such a claim that the husband's insolvency was concerted, if that was done merely to evade his debts; but, *semble*, it would be a defence if the insolvency was concerted for the purpose of calling the wife's estate into existence. *Mura v. Manning*, 8 Ir. Eq. Rep. 218.

10. *Satisfaction.*—A sum of 1,000*l.* was vested by a settlement in a father, in trust for the use of his daughter until she attained the age of 25, or the day of her marriage, with consent; and afterwards in trust to permit her to receive the interest for life; and after her death, in trust for her issue as she should appoint. On the daughter's marriage, the father, without noticing the former settlement, settled by deed several sums, amounting in all to 1,933*l.* in trust for the daughter for life to her separate use; and after her death, in trust for the children of the marriage as the husband should appoint, and in default of issue, in trust for the husband: *Held*, that the sum secured by the latter was a satisfaction of the debt due under the former settlement.

In general, a father will be presumed to have paid the debt he owes to a daughter, when in his lifetime he gives her on her marriage a greater sum than he owes her; and it is not necessary that there be an express stipulation to that effect, or that the husband should know of the debt. *Drew v. Bidgood*, 2 Sim. & Stu. 424, disapproved of. *Hayes v. Garvey*, 8 Ir. Eq. Rep. 90.

Cases cited in the judgment: *Wood v. Briant*, 2 Atk. 521; *Seed v. Bradford*, 1 Ves. 501; *Chave v. Farrant*, 18 Ves. 8.

11. *Power to appoint new trustees.*—*Funds appropriated to specific trusts.—Unadministered assets.*—The testator appointed A., B., and C., executors and trustees of his will, providing, that if either of them, or any succeeding trustee or trustees should die, or refuse, or neglect, or become incapable to act in the trust, it should be lawful to and for the survivor of them, the said A., B., and C., and such new trustee trustees to be nominated in their or either of their stead, to appoint a new trustee or new trustees instead of the said A., B., and C., or either of them, or any future trustee or trustees so dying, or desiring to be discharged, or refusing, or neglecting, or becoming incapable to act as aforesaid. A. having disclaimed the trust, and B. having died, C. alone (though not the survivor of A., B., and C.) appointed new

trustees under the power: *Held*, that the new trustees were well appointed. *Cafe v. Bent*, 5 Hare, 24.

See *Joint Stock Company: Jurisdiction.*

UNDERWRITER.

See *Lien.*

VENDOR AND PURCHASER.

See *Agent.*

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

De Beauvoir v. De Beauvoir. Dec. 5th, 1846.

VACATING INROLMENT OF DECREE.

Inrolment of a decree will not be vacated upon the grounds of having been signed and entered with undue haste.

In this case the Vice-Chancellor of England had allowed a general demurrer for want of equity to the plaintiff's bill. The decree was enrolled by the defendants as soon as it was drawn up, and no communication made to the other side.

Mr. *Bagshawe* now applied on behalf of the plaintiff for an order to vacate the inrolment upon the grounds that it had been made with undue haste, and that the plaintiff was thereby prevented from appealing to his lordship; but

The Lord Chancellor would not entertain the motion for an instant and refused the application, with costs.

Christian v. Foster and Bunnett v. Foster.
Michaelmas Term and Dec. 5th, 1846.

COSTS OUT OF REAL AND PERSONAL ESTATE.

Under intricate circumstances arising from events not contemplated by the testator, the costs of an administration suit were ordered to be paid rateably out of the realty and personally according to their value.

THE facts of this case are reported in 7 Beav. 540.

The present application was a petition of rehearing for the purpose of setting aside so much of the Master of the Rolls' order in the above suit as declared that the costs, charges, and expenses therein directed to be taxed ought, when so taxed, to be borne and paid out of the real and personal estate of the testator rateably and in proportion to their relative values. And the petition prayed that an order might be made as to the principle on which the costs should be taxed.

Mr. *Roll* and Mr. *Borrett* for the petitioner, the heir-at-law, submitted, that in the events which had happened there could be no doubt of his title, and consequently, there was no necessity to file a bill to ascertain his interest.

With respect to the personality the case was different and involved in much intricacy: There were 10 or 12 next of kin and 57 legatees. The costs amounted to 953l.; and the same solicitor appeared for both parties. The heirs-at-law claimed part of the personality, and were willing that the realty should bear such parts of the costs as had been incurred by them in their double capacity and claim on the realty and personality, but they contended that it would be a hardship upon them to be ordered to pay any other part of the costs. *Jenour v. Jenour*, 10 Ves. 562; *Ripley v. Moysey*, 1 Keen, 578; *Eyre v. Marsden*, 2 Keen, 578, (as reversed by the present Chancellor in respect of the costs, 4 Myl. & Cr. 240, and the cases there cited in his lordship's judgment); *Leacroft v. Maynard*, 1 Ves. jun. 280; *Cole v. Wade*, 16 Ves. 27, and *S. C. Walter v. Maunde*, 19 Ves. 424; *Akroyd v. Smithson*, 1 Bro. C. C. 502.

Mr. J. Parker, Mr. Elmsley, and Mr. Bird in support of the decree maintained that the heir-at-law was benefitted by it, inasmuch as it declared that the real estate belonged to him, and the personality to the next of kin, and consequently that so much of the fund as was derived from the sale of the realty should go to the former, and the produce of the personality to the latter. The principle upon which costs are apportioned is established by numerous cases, and was applicable to the present, as the inquiries were necessary for all parties. *Attorney-General v. Southgate*, 12 Sim. 77, (as reversed by Lord Lyndhurst); *Walter v. Maunde*, (*supra*); and *West v. Gooke*, 4 You. & Coll. (Exch.) 460, which follows the principle laid down in *Eyre v. Marsden*, (*supra*.)

Mr. Rolt replied.

The Lord Chancellor, after briefly stating the facts of the case and the effect of the Master of the Rolls' judgment, observed that the appeal had been properly framed in not asking for the whole of the costs out of the personality, as it would have been hopeless to contend that the heir-at-law was not to pay any. No principle has been more clearly laid down in this court than that of payment of costs out of personal estate in exoneration of the real estate, and his lordship would not lightly depart from it. But this principle had been explained and modified in various cases, amongst which might be cited the following: *Howse v. Chapman*, 4 Ves. 542; *Akroyd v. Smithson*, (*supra*); *Att.-Gen. v. Earl of Winchelsea*, 3 Bro. 373, also reported as *Att.-Gen. v. Hurst*, in 2 Cox, 364; *Eyre v. Marsden*, 4 Myl. & Cr. 248; and in *Walter v. Maunde*, 19 Ves. 424, which comes nearest to the present case. The decision of the Master of the Rolls, therefore, is not only not contrary to principle, but it is conformable with practice. In this case there is no residue out of which the costs might be paid. Events have happened which were not contemplated by the testator, and the investigation of the circumstances was very intricate. Substantial justice has been done to all parties, and therefore it is fair that the expenses should be borne equally.

Appeal dismissed with costs.

Rolls Court.

Reynell v. Spry. Dec. 17th, 1846.

PRODUCTION OF DOCUMENTS.—PROFESSIONAL CONFIDENCE.

A solicitor cannot refuse to produce papers to a party originally interested in them, on the ground of the professional confidence subsisting between himself and a third party also interested in those papers.

A letter written to a solicitor inclosing another letter which the writer requests the solicitor to send in his own name to a third party is not protected by the professional confidence subsisting between the solicitor and the writer.

THIS was a motion for the production of documents, certain of which were alleged to be privileged as communications passing between solicitor and client in reference to the subject of the suit. The object of the present suit was, to set aside an agreement for the purchase of the interest of the plaintiff in a certain property, upon allegations that the agreement had been fraudulently obtained from him through false representations of the nature of his interest concerted between the defendant Spry and a solicitor of the name of Young. The nature of the papers the production of which was sought, and the other circumstances of the case, sufficiently appear from the judgment.

Mr. Shapter for the motion.

Mr. Kindersley and Mr. Turner, *contra*, cited *Herring v. Cloberry*, 1 Phil. 91; *Jones v. Pugh*, *ib.* 96.

Lord Langdale said, that whatever might be thought of the principles upon which the right to refuse the production of documents rested, the rules which had been established must bind the court; but he did not think that those rules applied to the present case. It appeared that a letter had been written in the month of April, 1843, to Mr. Spry by Mr. Young, by which he offered to assert the present plaintiff's rights, in the success of which Mr. Spry was also interested upon the principle of no success no pay. In the month of May next following Mr. Young writes a letter making the same offer, for the purpose of its being shown by Mr. Spry to the present plaintiff. In consequence of this letter an arrangement was come to with Mr. Spry and the plaintiff, and a case as on the part of the plaintiff and Mr. Spry was laid by Young before counsel. Then a deed was executed to carry the terms which had been agreed for the prosecution of the suit into execution, and a suit was instituted by Young in the name of the present plaintiff. He was now asked to consider these proceedings as if they had been taken solely between Young and Spry; but could it be said that the plaintiff had not an interest to see that case, and what was done in that suit? He thought he had a right to see both the case and all the papers relating to that suit. This disposed of all the documents in dispute, except a letter written by Mr. Spry to

Mr. Young, inclosing the draft of another letter which, at Mr. Spry's desire, Mr. Young sent to the plaintiff as if from himself, and which led to the arrangement sought to be set aside by the present suit. It was urged that that letter was protected on the ground of the professional confidence between Mr. Spry and Mr. Young; but he did not think that any professional confidence could be said to exist in the matter. It was the act of a person who made his solicitor his tool, not his adviser. He was of opinion that this letter also must be produced.

Rutter v. Marriott.—Dec. 21, 1846.

VENDOR AND PURCHASER.—SALE UNDER ORDER OF THE COURT.

It is not regular to obtain an order for payment of purchase money into court, until it has been ascertained that the title has been accepted.

This was a motion to discharge an order that had been obtained against a purchaser, for payment into court of the amount of his purchase money for an estate purchased by him under an order of the court. It appeared that the usual order had been obtained, declaring him the purchaser of the estate in question; shortly after which an abstract of title was delivered, which was laid before counsel, and certain requisitions were made, which the plaintiff's solicitor considered were only made for the purpose of delay, and therefore caused a note to be served on the plaintiff for payment of the purchase money into court, and no counsel appearing on the plaintiff's behalf when the motion was heard, an order was made on an affidavit of service of the notice of motion.

Mr. Turner, in support of the application, said the invariable practice was, unless it was admitted or proved that all objections to the title had been removed, to order a reference to the Master to look into the title, and the order, therefore, which had been obtained was clearly irregular. Sugd. V. & P., 10th edit., v. i. p. 103—106; Newland's Pr. v. i. p. 336; 2 Dan. p. 910.

Mr. Parker, contra, said, that the defendant as trustee and executor, and also solicitor of the testator, was well acquainted with the nature of the title; and having also completed a purchase made by himself of a portion of the same estate on a former occasion, it was clear, and indeed it was well known to the plaintiff, that the objections made to the title were only for the purpose of delay and vexation.

The Master of the Rolls said the regular course was to ascertain whether the title had been accepted, and if that proved to be the case, then an order might be obtained for payment of the purchase money into court; but if not, then there must be a reference to the Master to look into the title, although, in some instances, the payment into court was ordered without prejudice to any question as to title.

The present case rested on these grounds: The order nisi was obtained regularly; an abstract of the title was shortly afterwards delivered, to which certain objections were taken and not removed, and a notice of motion was then given for an order to pay the purchase money into court. In consequence of some misapprehension, the purchaser did not appear upon that motion, and an order was obtained on an affidavit of service. It was clear, that if the court had been informed that there had not been an acceptance of the title, no such order would have been made; and it must therefore be discharged with costs, and an order made for a reference to the Master to look into the title.

Vice-Chancellor of England.

Morrison v. Hoppe. Dec. 7th, 1846.

MOTION TO DISMISS.—DELAY.
ABATEMENT.

Delay previous to the abatement of a suit is not a sufficient ground for dismissing the bill after the suit has abated.

THIS was a motion to dismiss the bill for want of prosecution.

Mr. Lloyd, in opposition to the motion, stated that the suit was abated, and that the delay which had taken place in reviving it was sufficiently accounted for by the circumstances.

Mr. Heathfield for the motion urged that there had been a great previous delay, of which no satisfactory explanation had been given.

His Honour said—You should have applied as to that before, not now when the suit is abated.

Order made that the suit should be revived upon a week.

Mr. Heathfield then asked for the costs, but his Honour refused to make any order as to them.

Vice-Chancellor Knight Bruce.

Anderson v. Stalker. Dec. 8th, 1846.

TRAVERSING NOTE.—56TH ORDER OF MAY, 1845.—19TH AND 20TH ORDERS OF 1842.

Upon a motion for leave to serve a copy of the traversing note, under the 56th Order of May, 1845, upon a defendant living out of the jurisdiction of the court, the motion was refused, the court being of opinion that the case did not come within the operation of the order.

Mr. Bevir moved for leave to serve a defendant, who was out of the jurisdiction, with a copy of the traversing note which had been filed in the office of the clerk of records and writs, under the 56th Order of May, 1845. That order requires that the traversing note having been filed, a copy of it should be served upon the defendant, as directed by the 19th and 21st Orders of October 26th, 1842, which

provide for the service of documents not requiring personal service. The 19th Order of October 26th, 1842, directs that the service of documents not requiring personal service shall be served upon the solicitor of the party, in lieu of the old practice of serving the same on the clerks in court. The 20th directs that the party proceeding in person shall indorse his name, residence, and address for service of all proceedings. And then it is provided by the 21st, that service of all proceedings of parties suing or defending in person, if the directions of the 20th Order shall not be attended to, and such proceedings shall not require personal service, shall be deemed sufficiently served if served upon the party personally or at his place of residence; but when the 20th Order shall be disregarded it shall be deemed sufficient service if left for the party at his address for service.

The Vice-Chancellor expressed a doubt whether the case came within the 56th Order, which, he said, appeared merely to apply to cases under the 19th and 20th Orders of 1842, as to documents not requiring personal service. The party moving could not say that this defendant sued or defended in person, for he was simply passive. He took no notice of the proceedings, nor could he be said to have "ceased" to have a solicitor, for he never had one.

Mr. *Berir* submitted that those orders merely referred to the mode of service. If the service would be good when made upon the solicitor, *a fortiori*, it would seem to be so when made upon the party himself. If, however, the impression expressed by the court were acted upon, the 56th Order would not apply to a defendant out of the jurisdiction, nor to those cases (which would be most frequent) where a defendant disregarded all process.

The Vice-Chancellor still doubted whether he could put this construction upon the orders in question, and refused the motion.

Queen's Bench.

(Before the Four Judges.)

Barnett v. Cox and another. Michaelmas Term, 1846.

MAGISTRATE. — TIME WITHIN WHICH ACTION MAY BE COMMENCED.

The right of action against a police magistrate, under the 2 & 3 Vict. c. 71, terminates at the end of three months from the time the act was committed; and two magistrates of the county of Middlesex, acting under the 3 & 4 Vict. c. 84, which confers on them the privileges of a magistrate of the police courts, are entitled to the privilege of having the right of action limited to three months.

The Metropolitan Police Acts are not local and personal acts, or of a local and per-

sonal nature within the meaning of the 5 & 6 Vict. c. 97, s. 5.

THIS was an action of trespass against two magistrates of the county of Middlesex who were acting under the 3 & 4 Vict. c. 84, s. 6, with the powers and privileges of a police magistrate of the metropolis, under the 2 & 3 Vict. c. 71. The plaintiff was convicted by the defendants for an offence under the 2 & 3 Vict. c. 47. The action was commenced within six calendar months of the act complained of, but not within three calendar months, which is the time limited by the 2 & 3 Vict. c. 71, s. 53. At the trial the plaintiff was nonsuited, on the ground that the action had not been brought within the proper time.

Mr. *Brumwell* now moved for a rule calling upon the defendants to show cause why the nonsuit should not be set aside and a new trial had. If the plaintiff had been committed by a magistrate who derived his authority from the 2 & 3 Vict. c. 71, then the action ought to have been commenced within three calendar months; *Heseldine v. Grove*.^a But the defendants are magistrates of the county of Middlesex, and do not derive their authority from the last-mentioned act; they are merely empowered by the 3 & 4 Vict. c. 84, s. 6, to do certain acts which must otherwise have been done by a police magistrate of the metropolis. This construction would leave in operation the other statutes as to cases that might come within their operation. The defendants were intended to have the same power in certain cases as a metropolitan police magistrate, but not to have the same protection. Secondly, the Metropolitan Police Acts are of a local and personal nature, as contrasted with the public acts, within the 5 & 6 Vict. c. 97, s. 5, which enacts, that from and after the passing of this act the period within which any action may be brought for anything done under the authority of or in pursuance of any such act or acts shall be two years, or, in case of continuing damage, then within one year after such damage shall have ceased, and that so much of any clause, provision, or enactment by which any other time or period of limitation is appointed or created shall be and the same is hereby repealed.

Cur, adv. vult.

Lord Denman, C. J., afterwards delivered the judgment of the court. If a plaintiff were to be committed by a police magistrate under the 2 & 3 Vict. c. 71, his right of action would terminate at the end of three months; *Heseldine v. Grove*.^a The defendants had not been so appointed, but were two magistrates of the county of Middlesex, acting under the 3 & 4 Vict. c. 84, s. 6, by which it is provided that two magistrates of the county sitting in certain parts of the metropolitan police district shall have all the powers, privileges, and duties of a magistrate of the police courts of the metropolis. The defendants, therefore, had all the privileges of a magistrate of the police courts of the metropolis given by the 2 & 3

^a 3 Gale & Dav. 210.

Vict. c. 71, and consequently that privilege of the limitation of three months upon any action against him which a magistrate of the police courts of the metropolis would have had. It had been also contended in argument, that the Metropolitan Police Acts were local and personal acts or of a local and personal nature, within the meaning of the 5 & 6 Vict. c. 97, in which case the defendants would be deprived of the three months. The court, however, is of opinion, that the acts in question are not within the last mentioned act. They are collected with the public and general acts and not with the public and local and personal acts, according to the decision directed by the houses of parliament, as mentioned in *Richards v. East*,^a and they are not, in the judgment of the court, of a local and personal nature, within the meaning of the 5 & 6 Vict. c. 97. There will therefore be no rule in this case.

Rule refused.

Exchequer.

Ellis v. Griffiths. Michaelmas Term, Nov. 19, 1846.

DEATH OF PLAINTIFF.—CA. SA.—DISCHARGE FROM CUSTODY.

A defendant is not entitled to be discharged out of custody by reason of the death of the plaintiff after the delivery of a writ of ca. sa. to the sheriff and before the time of the arrest.

IN this case the defendant having been arrested on a writ of *capias ad satisfaciendum*,

Martin moved to discharge him out of custody on the ground, that after the delivery of the writ to the sheriff, and before the arrest took place, the defendant died. It is conceded that in the case of a *feri facias* or an *elegit* the death of the plaintiff after the delivery of the writ to the sheriff would not abate the execution. But the reason is, that the goods or land are bound by the delivery of those writs to the sheriff. 1 Wms. Saund. 2198, note t; *Clerk v. Withers*, 2 Lord Raymond 1072. 1 Salk. 322; *Harrison v. Bowden*, Sider. 29. It is otherwise with a *ca. sa.*, which has no operation until the party is arrested under it. If it be held that a *ca. sa.* may be executed after the death of the plaintiff, a defendant might be detained in prison, although he was ready and willing to pay the debt; for the sheriff could not give a valid discharge, and a considerable interval might elapse before there was any personal representative to whom the debt could be paid, and even then he must be made a party to the record by *scire facias*. The writ commands the sheriff to take the defendant and have him in court to satisfy the plaintiff. If, therefore, the plaintiff be dead, and there is no person who is the legal owner of the judgment, the command is rendered impossible by the act of God, and so void. The

only authority bearing on the subject is a dictum of *Croke, J.*, in the case of *Cleve v. Veer*, Cro. Car. 458. There the question was, whether an extent sued out by an executor upon a statute staple acknowledged to his testator was void; and *Croke, J.*, who differed from the rest of the court, draws a distinction between a judicial writ to do execution after judgment, and a writ original. But that dictum was unnecessary for the decision of the case.

Welsby, who appeared to show cause in the first instance, was stopped by the court.

Pollock, C. B. No rule ought to be granted. It appears from the case of *Cleve v. Veer*, that so far back as the reign of Charles I., *Croke, J.* thus states the law:—"There is a difference betwixt a judicial writ after judgment to do execution, and a writ original, for the writ judicial to make execution shall not abate, nor is it abateable by the death of him who sues it, as is the common course if a *capias ad satisfaciendum* or a *feri facias* upon judgment issueth, the sheriff shall execute it although the party who sued it died before the return of the writ, and although the death be before or after the execution, if it be after the teste of the writ, it is well enough; as where a *capias ad satisfaciendum* is sued, and the party taken before or after the death of him who sued it and before the day of the return, or if a *feri facias* be avoided and the money levied by the sheriff, and the plaintiff dies before the day of the return of the writ, the executor or administrator shall have the benefit, and is to have the money; and it is no return for the sheriff to say that the plaintiff is dead, and therefore he did not execute it." I believe that such has always been considered the law, and I am sure it must have been acted upon in hundreds of instances. It is argued, that great inconvenience might arise from keeping a party in custody under circumstances like the present, but the very same inconvenience would exist where the plaintiff died immediately after the arrest. If we are to interfere in the one case we ought in the other. I am content to abide by the dictum of *Croke, J.*, which, though it was merely used for the purpose of analogy, is yet stated as a point too clear to be doubted.

Parke, B. I am of the same opinion. There appears to me no ground for the distinction taken between a writ against the person of a defendant and a writ against his goods. In the latter case, the sheriff is commanded to seize whatever goods and chattels the defendant had at the time of the issue of the teste of the writ, or which may have come to his possession before its return, except so far as the Statute of Frauds protects purchasers. No authority can be found that a writ of *feri facias* abates by the death of the plaintiff before it is executed, and I am at a loss to see any difference in principle between that writ and a writ of *capias ad satisfaciendum*. There is a case in *Noy's Reports*, p. 73, which has not been cited in argument, (*Thoroughgood's case*), where the defendant died after the issuing of the writ, and the sheriff levied the money upon the defendant's execu-

tor. That was held bad, and the report says, "for the writ is a *feri facias de bonis et catallis*, which cannot be after his death. But on the other part, if after execution awarded the plaintiff dies, yet, by the court, the sheriff can levy the money, and if he makes no executors or administrators, the money shall be brought into court, and there deposited until, &c. The principle is, that a judicial writ once regularly issued must go on until it is countermanded.

Alderson, B. I think it better to adhere to the law which we find laid down so far back as the reign of Charles I., than attempt to find out reasons for it. In attempting to find out a reason for an old law the reason is frequently mistaken for the rule. Thus, in the case of *Clerk v. Withers*, certain reasons are given why a *feri facias* should continue in force notwithstanding the death of the plaintiff, and because those reasons do not apply to a *ca. sa.* it is argued, that the rule cannot apply. But though the reasons apply more strongly to *fi. fa.*, they may, nevertheless, be applicable to a *ca. sa.*

Rolfe, B. I am of the same opinion. On looking at the case of *Cleve v. Veer*, it will be found, that the dictum of *Croke, J.* is not necessarily at variance with the opinions expressed by the other judges.

Rule refused.

COMMON LAW CAUSE LISTS.

Exchequer

Hilary Term, 1847.

Monday	Jan. 11	{ <i>Banc.</i> Peremptory Paper after Motions.
Tuesday	12	{ Ditto, before Motions.— <i>Nisi Prius</i> , Middlesex 1st Sitting.
Wednesday	13	Ditto.
Thursday	14	<i>Banc.</i> Circuits chosen.
Friday	15	Ditto.
Saturday	16	Ditto.
Monday	18	{ <i>Banc.</i> Special Paper.— <i>Nisi Prius</i> , London 1st Sitting.
Tuesday	19	<i>Banc.</i> Errors.
Wednesday	20	{ <i>Banc.</i> Special Paper.— <i>Nisi Prius</i> , Middlesex 2nd Sitting.
Thursday	21	Ditto.
Friday	22	Ditto.
Saturday	23	Ditto.
Monday	25	{ <i>Banc.</i> Special Paper.— <i>Nisi Prius</i> , London 2nd Sitting.
Tuesday	26	{ <i>Banc.</i> Special Paper.— <i>Nisi Prius</i> , Middlesex 3rd Sitting.
Wednesday	27	<i>Banc.</i> Special Paper.

Thursday	28	Ditto.
Friday	29	Ditto.
Saturday	30	Ditto.
Monday	Feb. 1	Ditto.

PEREMPTORY PAPER.

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

Rule Nisi.

23rd Nov. 1846.—*Dawson and others v. Waite—Martin & Otter.*

10th Nov. 1846.—*Boyd, assignee, &c. v. Podmore; Same v. Booth; Same v. Maddocks and another—Whitehurst & Humfrey.*

10th Nov. 1846.—*Doe several dems. Fox and others, v. Bagshaw—Serjeant Clarke & Whitehurst.*

9th Nov. 1846.—*Rees v. Waters and others—Keating & Greaves.*

21st Nov. 1846.—*Olliff v. Ginger, administratrix, &c.—Horn & Cole.*

20th Nov. 1846.—*Culshaw v. Meltzer and others—Udall & Martin.*

21st Nov. 1846.—*Smith v. Temperley—Warren & Lush.*

4th Nov. 1846.—*Dawson and others v. Molyneux—Bramwell & Martin.*

10th Nov. 1846.—*Van Putten v. Ruynenaers—Lush & Petersdorff.*

2nd Nov. 1846.—*Duncan v. Wright—Hawkins & Ryland.*

17th Nov. 1846.—*Peters and another v. Dobson—Prentice & Willes.*

SPECIAL PAPER.

For Judgment.

Duncan v. Benson, dem.

(Heard 2nd June, 1845.)

Ashley and others v. Pratt and others, special case.

(Heard 27th April, 1846.)

Monypenny v. Dering, special case.

(Heard 5th May, 1846.)

Pardoe, executor, &c. v. Price, special case.

(Heard 27th May, 1846.)

Pilkington and another v. Cooke, Esq., dem.

(Heard 3rd July, 1846.)

Haigh and another v. Jaggard and another, dem.

(Heard 18th Nov. 1846.)

Price, sen. v. Price, jun. dem.

(Heard 5th Dec. 1846.)

For Argument.

Griffith v. Pike, dem.

(To stand over until special case settled.)

Chilton, jun. v. The London and Croydon Railway Company, dem.

(Part heard 27th Nov. 1846.)

Spry v. Gallop, special case, by order of the late Lord Abinger.

Brown P. O. &c. v. Byers and others, special case, by order of Nisi Prius.

Price v. The Great Western Railway Company, special case, by order of Mr. Baron Alderson.

Harnett and wife v. Maitland, dem.

(Part heard 28th Nov. 1846.)

Doe d. Knight v. Chaffey, jun. and another, special case, by order of Nisi Prius.

Lewis v. Puxley, special case, by order of Vice-Chancellor Knight Bruce.

Potter and others v. Lyton and another, dem.

Jones v. Jones and others, dem.

Evans v. Upsher, special case, by order of Mr. Baron Alderson.

Wright and another, v. Webb, dem.

(Part heard 5th Dec. 1846.)

De Beauvoir v. Rushout, executrix, dem.

Washbourn v. Burrows, dem.

Bromage and another v. Lloyd and another, dem.

Forster v. Becke, dem.

Holford v. Body, special case, pursuant to award.

Carter v. Flower, dem.

Duke Knt. and others v. Dive, dem.

Galsworthy v. Sprutt, dem.

Hammond v. Peacock, special case, by order of Mr. Baron Alderson.

Shuttleworth and another surv. partners, &c. v. Williamson and others, dem.

Hills v. Kitching, dem.

Harris v. Wall, special case, by order of Nisi Prius.

Good and another v. Burton, dem.

NEW TRIAL PAPER.

For Judgment.

Moved Easter Term, 1846.

Liverpool, Mr. Justice Coleridge.—Ormerod and others v. Chadwick and another, Esqrs.,—Martin.
(Argued 13th Nov. 1846.)

Chester, Mr. Justice Williams.—Pott and others, assignees, &c. v. Clegg, executor, &c.—Chilton.
(Argued 17th Nov. 1846.)

For Argument.

Moved Hilary Term, 1846.

Chester, Mr. Justice Williams.—Chamberlain v. Chester and Birkenhead Railway—Crompton.
13th Nov, 1846, ordered to stand over till Easter Term.

Moved Michaelmas Term, 1846.

Middlesex, Lord Chief Baron.—Richardson v. Doyle—Attorney-General.

Middlesex, Lord Chief Baron.—Clark v. Bell, F. O., &c.—Martin.

Middlesex, Lord Chief Baron.—Ellaby v. Saunders—Watson.

Middlesex, Lord Chief Baron.—Burton (a pauper) v. Revell and another—Petersdorff.

Middlesex, Mr. Baron Platt.—Welby v. Brown—Martin.

London, Lord Chief Baron.—Samuel v. Robinson—Attorney General.

London, Lord Chief Baron.—Dixon v. Westlake and others—Martin.

London, Lord Chief Baron.—May v. Chapman and another—Watson for defendant Chapman.

London, Lord Chief Baron.—Rivett and others v. Wood—Petersdorff.

Maidstone, Mr. Justice Coltman.—Brown and another v. Troup—Serjeant Shee.

Guildford, Mr. Baron Parke.—Wright and another v. Webb—Lush.

Guildford, Mr. Justice Coltman.—Bailey v. Stevenson—M. Chambers.

Bedford, Mr. Justice Williams.—Henshaw v. Moreton—Worledge.

Devizes, Mr. Baron Platt.—Robertson v. Gantlett—Crowder.

Exeter, Mr. Baron Platt.—Carlile v. Maunder and others—M. Smith.

Exeter, Mr. Justice Erle.—Pheysey v. Vicary—Butt.

Wells, Mr. Baron Platt.—Doe, several demises, Welsh and others v. Langfield and others—Crowder.

Wells, Mr. Baron Platt.—Payne v. Hayne—Cockburn.

Bristol, Mr. Justice Erle.—Doe d. Chidgey v. Harris and ux.—Serj. Manning.

Bala, Lord Denman.—Doe dem. Cadwallader and others v. Price—Attorney General.

Ruthin, Lord Denman.—Doe d. Hall and ux. v. Mouldsdales—Attorney General.

Berks, Mr. Justice Maule.—Owen v. De Beauvoir—Whateley.

Worcester, Mr. Serjeant Gaslee.—Bellamy v. Burch—Serjeant Talfourd.

Worcester, Mr. Serjeant Gaslee.—Nash on affidavits v. Hemming—Serjeant Talfourd.

Worcester, Mr. Serjeant Gaslee.—Moore v. Gardner—Whateley.

Hereford, L. C. J. Wilde.—Jones v. Jones and others—Godson.

Monmouth, Mr. Justice Maule.—Rees and others, on affidavits, v. Prothero—Whateley.

Gloucester, Lord Chief Justice Wilde.—Townshend v. Syms—Godson.

Gloucester, Mr. Justice Maule.—Doe d. Wood v. Wilkins—Serjeant Talfourd.

Lincoln, Mr. Justice Patteson.—Burnby v. Rollit—Whitehurst.

Lincoln, Mr. Justice Patteson.—Stockdale v. Merrifield—Whitehurst.

Derby, Mr. Justice Patteson.—Harrison v. Heaton and another—Humfrey.

Derby, Mr. Justice Patteson.—Frost v. Stanley—Humfrey.

Warwick, Mr. Justice Patteson.—Sturge and another v. Hall and another—Martin.

Warwick, Mr. Justice Patteson.—Goodwin and another v. Fisher—Mellor.

York, Mr. Justice Wightman.—Skilbeck v. Vander Vyver—Baines.

York, Mr. Justice Wightman.—Wingfield v. Marston, exor.—Martin.

York, Mr. Justice Wightman.—Shaw and others v. Rowley and another—Martin.

Durham, Mr. Justice Cresswell.—Webb v. Watts—Martin.

Liverpool, Mr. Justice Wightman.—Humberstone and another, executor and executrix, v. Jones—Henderson.

Liverpool, Mr. Justice Cresswell.—Schuster and others v. Cooper—Knowles.

Liverpool, Mr. Justice Cresswell.—Haynes v. Butterworth—Baines.

Liverpool, Mr. Justice Cresswell.—Sleddon and another, assignees, &c. v. Dixon, P. O.—Martin.

Liverpool, Mr. Justice Cresswell.—Smith v. Fisher and another—Martin.

Moved after the 4th day of Michaelmas Term, 1846.

Middlesex, Mr. Baron Platt.—Meredith v. Holman—Martin.

Middlesex, Mr. Baron Platt.—Meredith v. Holman—Chambers.

Middlesex, Mr. Baron Platt.—Ivimey v. Marks—Peacock.

COMMON LAW SITTINGS.

Queen's Bench.

In and after Hilary Term, 1847.

MIDDLESEX.

In Term.

1st Sitting—Tuesday Jan. 12

And two following days at Eleven o'clock.

2nd Sitting, Friday Jan. 15

And subsequent days at Eleven o'clock.

A list of such remanets as appear fit to be tried in Term will be printed immediately, but on the statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, provided the other side have two days' notice of the application at the Marshal's to postpone, and do not oppose the application on good grounds—the usual number of completed and new causes will be put into the list day by day in their usual order.

3rd Sitting, Friday Jan. 29

At $\frac{1}{2}$ past Nine o'clock precisely, for Undefended Causes only.

Sittings after Term, Tuesday Feb. 2

LONDON.

In Term.

Sittings at 10 o'clock on Saturday Jan. 30

For Undefended Causes and such as the Judge considers fit to be taken.

After Term.

Wednesday Feb. 3

(To adjourn.)

Common Pleas.

In and after Hilary Term, 1847.

In Term.

MIDDLESEX.

LONDON.

Friday . . . Jan. 15 | Wednesday . . . Jan. 20

Friday 22 | Wednesday 27

After Term.

MIDDLESEX.

LONDON.

Tuesday . . . Feb. 2 | Wednesday . . . Feb. 3

N. B. The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Wednesday the 3rd Feb. in London, no causes will be tried, but the court will adjourn to a future day.

Exchequer of Pleas.

In and after Hilary Term, 1847.

IN MIDDLESEX.

In Term.

1st Sitting, Tuesday Jan. 12

2nd Sitting, Wednesday 20

3rd Sitting, Tuesday 26

IN LONDON.

1st Sitting, Monday Jan. 18

2nd Sitting, Monday 25

After Term.

IN MIDDLESEX.

IN LONDON.

Tuesday . . . Feb. 2 | Wednesday . . . Feb. 3

(To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

THE EDITOR'S LETTER BOX.

The letter of a subscriber relating to the practice in regard to solicitors' costs of a fiat on the bankrupt's petition is acceptable, and we hope to find space for it next week.

On the subject of the after-acquired property of an insolvent, noticed at p. 149, *ante*, W. W. T. refers G. H. to a decision of Mr. Commissioner Fane, (*In re Taylor*), very ably reported in the Daily News of 15th August last, in which case our correspondent was concerned as solicitor to the mortgagee therein mentioned.

K. O. is informed that an articled clerk, having served three years and a half to B. in the country, may then study under a conveying barrister for any period not exceeding a year, and afterwards be assigned for the remainder of his clerkship to an attorney in town (such attorney not being the agent of the country attorney). It would be more advisable that the assignment to the London attorney should be before the service to the conveyancer.

In the case mentioned by "Lex," we think that when the articles of a clerk expire a *few days only after* Trinity Term, it is doubtful whether the court, under special circumstances, (as the formation of a partnership,) would allow him to be examined *de bene esse* in Trinity Term. It is constantly done when the articles expire *during* the Term, and there is a case, (*ex parte Twynam*, 19 L. O. 62,) where the court allowed the examination of a candidate going abroad. There was also an instance of a person being sworn in at the judge's chambers since the 6 & 7 Vict. c. 73, which does not require an oath in "open court."

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JANUARY 9, 1847.

—"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

THE APPROACHING SESSION OF PARLIAMENT.

ANTICIPATED LAW REFORMS.—IS THE PRO- FESSION SUFFICIENTLY REPRESENTED?

In a few days from this time, namely, on Tuesday, the 19th instant, the new session of parliament will commence. We are therefore naturally induced, on behalf of all concerned in the right administration of justice and the welfare of the profession in general, to consider what measures bearing on the law and its practice are likely to be renewed or introduced into parliament. It is said, indeed, that various important political subjects, foreign and domestic,—particularly the affairs of Ireland and the progress and application of the principles of free trade,—will so fully engross the attention of both houses, that the lawyers need not apprehend any new inroads upon our judicial system.

We cannot flatter our readers that this will be a true prediction of the state of legal affairs. On the contrary, we expect that there will be the usual quantity of law-reforming attempts, and the usual result of ill-considered legislation. It may happen that, in the early part of the session, nothing more will be done than the re-introduction and re-printing of several of the usual bills relating—1. To a General Registry, and perhaps other conveyancing subjects; 2. The Law of Bankruptcy and Insolvency;* 3. The Court of Chancery, and the expense of administering justice there and elsewhere; 4. Copyhold Enfran-

chisement; 5. The Poor Laws; 6. The Highways and Turnpikes; 7. The Game Laws; 8. The Criminal Laws, particularly in regard to punishments; and other minor measures, "the small gear" of the humbler class of reformers.

But, though there will probably be no important legal battle to be fought until after Easter, we must not be too confident of such a respite from further innovation. It will be our province (as heretofore for many a year) to watch the progress of imperfect legislation, and call attention to whatever may concern the interests of justice and the welfare of the profession.

In the meantime inquiries are naturally made into the nature and extent of our representation in parliament, with a view to the support of *useful*, and the opposition to *pernicious* measures. Are the lawyers already in parliament, willing and able to discharge their duty alike to the public and their fraternity? We deeply regret to say that complaints have frequently been made, and especially of late, that (speaking generally) the members of the bar who are in parliament do not sufficiently consult the general interests of the profession. We look in vain amongst the debates in parliament for any zealous vindication of the rights or interests of professional men, or any strenuous resistance to the measures which every session are brought forward, equally injurious to the public and the profession.

It is well known that all the great classes of the community are represented in parliament. The bankers, the merchants, the traders, the farmers, and the

* Of this, see p. 230, *post*.

manufacturers, have each their respective advocates in the senate. It may, indeed, be supposed, that the profession of the law is represented by the Law Lords in the Upper House, and by the Barrister M. P.'s in the Lower. But are we *efficiently* represented? What have these distinguished personages vouchsafed to do, or attempted for us? The general impression unquestionably is, that these learned senators in both Houses are, with few exceptions, so intent on the advancement of their own political objects, that the condition of the profession rarely enters into their consideration.

It may be useful to go over the names of the members of the bar who hold seats in the House, and we shall, therefore, subjoin a list of them, in order that their sentiments may be ascertained, and an opportunity afforded, if they should be "found wanting," of supplying the want by more efficient means. Our readers will each for himself determine the amount of debt he gratefully owes to these several "learned Thebans." Many of them, no doubt, are not conscious of any gross neglect of their duty; but the complaints to which we have referred come as loudly from barristers as from attorneys. One honourable exception from the general rule may be stated as an instance of what might be done to repress the vulgar and ignorant abuse of professional men. We refer to Mr. Stuart, the member for Newark, who warmly repelled in his place in parliament one of the unjust attacks which uninformed and prejudiced persons are in the habit of indulging. Then in the Upper House, Lord Langdale has abundantly shown the interest he feels in the character and welfare of the larger branch of the profession, not only in procuring the important act for consolidating and amending the Law of Attorneys, but by his favourable sentiments expressed on many occasions, both in parliament and on the bench. It should also be borne in mind, that Lord Cottenham, when an attempt was made to remove all suits relating to charities from the Court of Chancery, powerfully advocated the sufficiency of that court for the due discharge of all the duties that belong to it.

If we have passed by the names of any who have exhibited due zeal for the true welfare of their brethren, we shall only be too happy to make amends for the omission, and gladly record their merits.

We now present our list of

LAWYERS IN PARLIAMENT,^b

which we have endeavoured to make as complete as possible to the present time:

Aglionby, H. A., Coekermouth.
 Aldam, Wm., Leeds.
^c Benbow, John, Dudley.
 Bernal, R., Weymouth.
^d Blewitt, Regd. James, Monmouth.
 Bodkin, W. H., Rochester.
 Bouverie, Hon. E. P., Kilmarnock.
 Bruges, Wm. Heald Ludlow, Devizes.
 Buller, C., *Judge-Advocate*, Liskeard.
 Cardwell, E., Clitheroe.
 Cripps, W., Cirencester.
 D'Eyncourt, Right Hon. C. T., Lambeth.
 Dundas, Sir D., Q. C., *Solicitor-General*,
 Sutherlandshire.
 Dundas, Hon. J. C., Richmond.
 Elphinstone, Sir H., D. C. L., Lewes.
 Escott, B., Winchester.
 Escourt, T. G. B., Oxford, (University).
 Ewart, W., Dumfries.
 Godson, R., Q. C., Kidderminster.
 Granger, T. C., Durham, (City).
 Grattan, H., Meath, (County).
 Greene, T., Lancaster.
 Grey, Rt. Hon. Sir G., Bart., *Secretary of*
State for the Home Department, Devonport.
 Hardy, J., Bradford.
 Hayter, W. G., Q. C., Wells.
 Inglis, Sir R. H., Bart., Oxford, (University).
 Jervis, Sir John, Q. C., *Attorney-General*,
 Chester.
 Kelly, Sir F., Q. C., Cambridge, (Borough).
 Law, C. E., R. C., Cambridge, (University).
 Lefevre, Right Hon. C. S., *Speaker*, North
 Hampshire.
 Lefroy, A., Longford.
 Loch, J., Kirkwall.
 Maclean, D., Oxford, (City).
 Macaulay, Right Hon. T. B., Edinburgh.
^d Neeld, J., Chippenham.
 Nicholl, Right Hon. J., D. C. L., Cardiff.
 O'Brien, C., Clare, (County).
 O'Connell, D., Q. C., Cork, (County).
 O'Connell, J., Kilkenny.
 O'Connell, M., Tralee.
 Parker, J., Sheffield.
 Roebuck, J. A., Q. C., Bath.
 Round, C. J., Essex, (North).
 Shaw, Right Hon. F., Dublin, (University).
 Sheil, Right Hon. R. L., Dungarvon.
 Strickland, Sir G., Bart., Preston.
 Stuart, J., Q. C., Newark-upon-Trent.

^b It is scarcely necessary to remind our readers that several of these gentlemen, though called to the bar, are not now in practice; but as we are not aware that any of them have been *dis-barred*, we exhort them to uphold the dignity and well-being of their order, and with it the best interests of society.

^c This gentleman appears to be the only practising solicitor in the House.

These gentlemen were formerly solicitors.

Tancred, H. W., Q. C., Banbury.
 Thesiger, Sir F., Q. C., Abingdon.
 Villiers, Hon. C. P., Wolverhampton.
 Watson, W. H., Q. C., Kinsale.
 Wood, Rt. Hon. Sir Charles, Bart., Halifax.
 Wortley, Hon. J. S., Q. C., Buteshire.

Looking over this mustre roll of eminent advocates—distinguished, in various degrees, for high character, for eminent natural talents, and learned and elegant attainments,—it is deeply to be regretted that so many of them are absorbed in political aspirations, always of a fleeting character, that they lose sight of the abiding honour which belongs to the great and enlightened lawyer. Their noble profession is too often made but the stepping-stone to their “ vaulting ambition,” and we doubt not that many have had reason to regret the sacrifice of their permanent interests for hopes of celebrity and elevation rarely realized and always uncertain in duration.

We would ask,—could not some of these gifted men be induced to devote themselves to the promotion of the security and the solid and enduring improvement of our laws and institutions? Let a serious appeal be made to the better feelings and independent character of the bar. We fear, indeed, that the two great branches of the profession are in danger of some estrangement, much to the prejudice, as well of the public as themselves, by the want of mutual co-operation in matters affecting the well-being of the whole body. Are the leaders of the bar, who occupy important seats in parliament, and have the means and power of doing justice to the integrity and intelligence of their brethren, acting wisely, generously, or justly, in remaining silent and passive when matters of “ great pith and moment ” to the station and honour of the profession are debated in the senate? Have they not the moral courage, or *esprit de corps*, to stand up amongst the aristocratic fashionables of the “ Commons House of Parliament,” and support their order? Is not that *order* as honourable in its purpose, as enlightened in its means, and beneficial in its end, as any order of the state? Wherefore should there be this shrinking from the vindication and maintenance of the just rights of honest and skilful lawyers. It is needless to say, that without them it is impossible for society to exist. They are the very organs of domestic government; and without a body of men holding their position and performing their functions, the busi-

ness of the community could not be carried on.

Now, it is within the power, as it clearly is a part of the duty, of the higher branch of the profession to *take the lead* in the improvements which are projected, whether in alterations of the law as propounded in parliament, or in the practice of the courts, or in increasing the means of study, the acquisition of legal knowledge, and the general attainments necessary to a liberal profession.

Let us hope, that some in the higher walks of the profession will, though late, betake themselves to the consideration of the various means by which the profession may be sustained and raised in public estimation. We are the more anxious that the leaders of the bar, and those in parliament especially, should evince their brotherhood with the great bulk of the respectable part of the profession, because we observe that seeds of mischievous disunion are attempted to be sown by persons pretending to represent the feelings of a section of the profession, but who are unacquainted with the opinions of the greater portion of its respectable classes, and unable to appreciate the lasting interests of the general body.

We shall take a fitting opportunity of returning to the consideration of this important subject. In the meantime we venture to advise those who are engaged in promoting professional improvements to avoid every appearance of disunion, and to unite together under the safe direction of long-established societies.

COMMON LAW PRACTICE.

DURATION OF WRITS OF EXECUTION.

PERHAPS no change has been introduced into the practice at common law, in modern times, which is more generally acknowledged as an improvement, than that which dispenses with the entry of continuances, and renders the proceeding by *scire facias* to revive judgments less frequent. The old practice in these respects occasioned great inconvenience, expense, and delay; it was, for the most part, useless as a notice or warning to the party sued, and was not recommended even by the consideration, that it afforded compensation to the practitioner in the shape of fees for the diligence exercised by him in matters of greater moment, where his services

were, and still are, left without any adequate requital.

The entry of continuances on the roll was abolished by an express rule of court;^a but the alteration, as respects the revival of judgments by *scire facias*, is a result founded on a better understanding of the practice, as illustrated by a series of modern decisions, and modified by the enactment of the statute 3 & 4 W. 4, c. 67, sect. 2; the extent and consequences of which it is extremely desirable should be accurately understood.

According to Lord Coke,^b at common law, in personal actions, after judgment given, if the plaintiff sued out no process within the year, he could have no *scire facias*, but was driven to his original. It was said, that after a year elapsed the law presumed that the judgment was satisfied, or at least that the defendant might have some cause to show against issuing execution. The Statute of Westminster 2nd, (13 Edw. 1, c. 45,) gave the writ of *sci. fa.* where the record is older than a year. Under the old practice, in cases of final process, the writs might be sued out, tested of a date prior to that on which they were actually sued out, and made returnable on a day certain. When subsequent writs were necessary, the one was connected with the other by an entry of *vice-comes non misit breve*, on the return day of the prior writ. By stat. 3 & 4 W. 4, c. 67, s. 2, all writs of execution may be tested on the day on which the same are issued, and be made returnable immediately after the execution thereof; and since the passing of this statute the practice has been not to return the writ until after its execution. Soon after this practice was established, the question arose in a case of *Simpson v. Heath*,^c whether defendant might be taken in execution after the expiration of a year from the judgment, upon a writ issued during the year, but not returned and filed, without reviving the judgment by *scire facias*? The simple facts of this case were, that on the 14th March, 1837, final judgment was signed, and on the 26th December, a *capias ad satisfaciendum* issued, returnable immediately after its execution, upon which *ca. sa.* the defendant was arrested, on the 26th July, 1839.^d

The point to be decided by the court was, whether the execution was regular? And it was argued for the defendant by the present Mr. Justice Williams, then at the bar, with great learning and ingenuity; but the Court of Exchequer, after deliberation, pronounced its judgment for the plaintiff. In this judgment it was said:—"It is undoubtedly requisite, in order to avoid the necessity of a *sci. fa.*, to sue out a writ of execution within a year, and in order to connect the writ on which the arrest takes place with that sued out, it is also necessary to have proper continuances, and for the purpose of those continuances to have the first writ returned and filed; but there is no authority for saying that the returning and filing should be within a year. The issuing of the writ within the year, if the same writ is acted upon—or if a different writ, then the issuing of a writ in time properly connected with that and acted upon—is enough."

In a subsequent case of *Greenshields v. Harris*,^e where final judgment was signed on the 2nd April, 1840, the venue being Surrey, and on the same day a *testatum ca. sa.* was issued into Oxfordshire, under which the defendant was taken into custody on the 18th June, 1841, upon an application to the Court of Exchequer to set aside the execution for irregularity, the court declared its determination to abide by the decision in *Simpson v. Heath*; and Parke, B., in pronouncing the judgment of the court, thus expressed himself:—"A writ of *ca. sa.*, unlike the writs the duration of which is limited by the legislature, runs until it is executed, and it is a mistake to suppose that if it be not executed within twelve months, the law makes any presumption in favour of a defendant. When, indeed, the plaintiff has neglected to take any step in the cause for twelve months, it is otherwise, but where he has done everything necessary to the issuing of a valid writ of execution, the only inference, if any, from the writ not being returned is, that the sheriff has been unable to find the defendant to make the arrest." The same point was again incidentally discussed before Baron Parke, sitting alone in the Court of Exchequer, in the late case of *Harmer v. Johnson*.^f In that case judgment was signed on a warrant of attorney on the 13th Sept. 1841, and on the 14th

^a Reg. Gen. H. T. 4 W. 4, s. 2.

^b 2 Inst. 469.

^c 5 Mees. & W. 631.

^d The report says "1838," but this is a mistake: see the observations of Parke, B., in *Greenshields v. Harris*, 9 Mees. & W. 775.

^e 9 Mees. & W. 775; 2 Dowl. N. S. 272.

^f 14 Mees. & W. 336; 3 D. & L. 38.

Sept. 1842, a *fi. fa.* was issued on that judgment by consent, without any *scire facias*. The *fi. fa.* so issued was returned *nulla bona*, and filed on the 20th Dec. 1844, and on the 25th April, 1845, an *alias fi. fa.* issued, under which the defendant's goods were taken in execution. The defendant became bankrupt, and the application to set aside the execution was made by his assignees. It was admitted that the judge's order made by consent, warranting the issue of the first execution, without a *sci. fa.*, was valid as between the parties, and the court held that it was also valid as against the defendant's assignees. But the principal objection was, that the *alias fi. fa.* was irregular because it was not properly connected with the first *fi. fa.* by continuances or otherwise. After giving the point great deliberation, Parke, B., delivered an elaborate judgment, in which he stated, that "practically there was no available mode of continuing a writ in the new form, on the old principle, which, though a fiction, made the record consistent, and excluded any presumption of the satisfaction of the debt, arising from intermediate delay. It was highly probable that all the consequences of the changes introduced by the statutes 2 W. 4, c. 39, and 3 & 4 W. 4, c. 67, were not foreseen, but he thought the legislature must be taken to have intended that process in the new form should be connected; and that the only mark of connection should be, the description of one writ being an *alias* or *pluries* writ. It was to be intended that writs of execution in the new form had similar properties with writs of mesne process, and consequently, that succeeding writs need not be tested on the day of the return of the preceding writs, nor within any particular time afterwards." And he added that no practical inconvenience followed to the defendant, who derived no real advantage from the writ being continued on the record, and if the amount of the judgment had been really paid before the issuing of an *alias* or *pluries* writ, the defendant might be relieved upon motion. Upon these grounds the execution was held to be regular.

The last reported case on this point was decided by the late Mr. Justice Williams, sitting in the Bail Court.* The facts were as follow:—Final judgment was signed against two defendants on the 8th June,

1843, and on the same day a *ca. sa.* issued against both, upon which one defendant (Hodgkinson) was arrested, but discharged under the Insolvent Act in the month of August of the same year. Against the other defendant, now the applicant, nothing was done on the *ca. sa.*, but a *fi. fa.* was issued against his goods on the 17th January, 1846, which it was now sought to set aside as irregular. The learned judge, after consideration, stated it to be quite clear, that the writ of *ca. sa.* sued out in due time did not expire by lapse of time, but remained in force until executed. The question was, whether, in order to justify the issuing of the *fi. fa.*, a return should have been previously made to the *ca. sa.*, or whether it was sufficient that materials existed for completing the roll, so as to warrant the issuing of the *fi. fa.*? On that point his decision was grounded on the decision of the Court of Exchequer in *Greenshields v. Harris*, where it is said—"In this case the writs *may* be regularly entered on the roll, and if there be materials to make the roll up that is sufficient. The production of the writs with the sheriff's return thereon, is an authority for the officer to make up the roll." So here the sheriff might return *non est inventus* as to the present applicant at any time, and then the roll could be completed. The *fi. fa.* was therefore held to be regular.

The practical result of these decisions appears to be,—1st. That if a writ of execution is issued within a year after judgment has been signed, no *scire facias* is necessary to revive such a judgment at any time afterwards, although such writ of execution remains unexecuted, and without any attempt being made to execute it. 2. That when a second writ of the same denomination as a preceding writ is issued, after any interval, however lengthened, the second or subsequent writs will be sufficiently connected with the former by simply describing it as an *alias* or *pluries* writ, as the case may be. Lastly, that it is not necessary that the first writ should be actually returned and filed before the second writ issues, if materials exist for making a due return, and thus rendering the roll consistent and complete.

That a judgment creditor may obtain the advantage which these reasonable rules place within his reach, it is necessary in every case that a writ of execution should issue within twelve months after judgment has been signed, although there should be no opportunity or intention of executing

* *Franklin v. Hodgkinson and Beale*, 3 D. & L. 554

such writ; and in lieu of the ordinary stipulation that execution should not issue within a specified period, upon certain conditions, we should recommend a provision to be substituted, that execution may issue, but that no levy should be made, or arrest take place, unless in default, &c.

NOTES ON EQUITY.

SOLICITOR AND CLIENT. — MORTGAGE. — UNDERHAND AGREEMENT. — COSTS.

A CASE in the Court of Chancery in Ireland recently came before Lord Chancellor *Sugden*,* which involved several points of importance relating to the conduct of a solicitor in a mortgage transaction, and an alleged underhand agreement between a father and a son who had just come of age. The facts are clearly stated in the judgment, of which we shall give the substance, accompanied by his Lordship's observations on the solicitor's conduct, and the effect of the evidence.

The bill was filed for the purpose of impeaching a mortgage to a lady, on the ground that it sprang out of an improper agreement between the father and son. Upon the face of the instrument, which I have read carefully, speaking merely of the appointment, there is nothing to convey that it was an improper transaction. It was a regular appointment by the father, who had the power, to the son. No doubt it is of a considerable portion of the estate, but no question is raised as to the appointment being illusory; and considering how much was left to go to the other children, without reference to the circumstance of their being otherwise provided for, this appointment was not, I think, illusory.

"Mr. Maxwell was the solicitor of the family. The deed was witnessed by him, although the name of Fottrell, who was solicitor for Mrs. Fry, is upon it, and the transaction is, therefore, so far irregular; but both of them attest the execution, so that it must be considered to have been prepared with the approbation of Maxwell, the family solicitor. Then Mrs. Fry's mortgage is in all respects regular. The son had obtained the property, and it is quite clear that he might mortgage it the next day if he thought proper, provided he received the money for himself and *bonâ fide*, so far as the lender was concerned. The mortgage deed recites the application by the son for the money. The whole money was professed to be paid to him. The transaction purports to have been simply with him, and there is endorsed on the deed a receipt for 800*l.*, witnessed by Maxwell; therefore, he

cannot be heard to say that it was an improper transaction, he himself being evidently a party to the whole of it.

It is not attempted to be asserted that Mrs. Fry knew anything of any underhand agreement; therefore, if she is to be affected, it must be on the doctrine of constructive notice, through Fottrell, her solicitor. Before I examine the grounds for that, I may observe, that the case presents this extraordinary aspect, that Fottrell being the person charged with the fraud and a defendant in the cause, and Mrs. Fry, his client, being about to be made responsible for it, although no attempt is made to bring home the fraud to her, except by constructive notice, the bill, by the consent of the plaintiff, is dismissed against Fottrell without costs. So that the person against whom fraud is charged is dismissed, but the person against whom the fraud is not charged is attempted to be made liable for that fraud. If fraud was proved against Fottrell, although no relief might have been had against him, that would not have been a very strong ground for fixing his client with the knowledge of the fraud.

"There is no suspicion on the face of those deeds, but that there is in the transaction generally, nobody can deny who understands the nature of it. In the first place, two drafts were produced, both prepared by the mortgagee's solicitor. It is not likely, unless the appointment was made for the purpose of the mortgage, that would have taken place. It is not argued that because the deed of appointment was prepared by the mortgagee's solicitor, the mortgage can therefore be impeached. That circumstance is of no weight standing by itself, though it might be important if the circumstance were carried further. The son was of age, and when we find Mr. Maxwell, the solicitor of the family, joining in the attestation of the appointment, and alone attesting the mortgage and the receipt for the money, I think that circumstance entirely done away with. Then, there is the alteration in the date of the mortgage. The date of the draft was originally in July, but the deed itself bears date the 6th of August. I think that is not entitled to any weight. There was originally no date to the draft of the appointment, and that may have been intended to be executed at an earlier period. Therefore, the alteration of the date of the mortgage from July to August proves nothing.

"Another circumstance relied on is, that the father joined in the deed. I think that was perfectly regular. James Hamilton, the brother, who was an annuitant under the settlement, joined in the deed to give the mortgage priority. Then George Hamilton, the father, was a trustee for him, and, as to the residue of the property, for all the other children. One portion of the interest was renewable, and it was proper that the father should join with a view to obtaining the renewal. That was the very thing which would have been done, supposing this to be a *bonâ fide* transaction. The mortgagee would be entitled to the benefit of

the legal estate, as far as regards the interest of the son. Therefore, I consider that that goes for nothing.

"Then it is said that the father joined in the bond and warrant of attorney with the son. That circumstance is suspicious. It is not noticed in the mortgage. Though the mortgage does notice the fact that the son had entered into a bond, it refers to it as if he alone had entered into the bond, and does not notice that the father was a co-obligor. That, therefore, looks as if the parties were anxious to keep out of view the circumstance of the father joining in the bond. That leads the mind to some suspicion, but it is only suspicion, and it goes no higher. Then comes the letter addressed by the mortgagor to the father, of the same date as the mortgage, which is also a suspicious circumstance. She says in that letter that she will not call in the money for three years, and that seems as if he was considered as more than a mere surety. But still it is only suspicion, and is consistent with the transaction being *bonâ fide*. The mortgagor was a young man, only starting into life; and it was not unnatural that the concurrence of the father should be required. The father was the head of the family, and it was very likely that a matter such as this should be communicated to him. Still both these circumstances do throw a shadow of suspicion on the case.

"Then the case stands thus:—This party having undertaken to prove that there was a corrupt agreement has wholly failed in doing so.—He has failed in proving either the alleged embarrassments of the father, or the existence of an underhand agreement. The money I must consider to have reached the hands of the son alone. What was done with it afterwards matters not. There is no proof of assent on the part of the mortgagee to any underhand agreement, and I am not at liberty, on mere conjecture or suspicion, to do so dangerous a thing as to impeach the title of a *bonâ fide* mortgagee having the legal estate.

"In *Macqueen v. Farquhar*, 11 Ves. 467, the question did not arise between the immediate parties, and there was supposed notice. Lord Eldon said, (p. 482), 'I should very reluctantly lay down that notice from opinions in an abstract, or anything that appears upon a deed, that there may, by possibility, be reason to suspect, what I cannot know and may not be true, that the title is bad, is such notice as would affect a purchaser.' That was in reference to a by-gone transaction. This is of a different nature, for there the mortgagee was an actor. But the same doctrine would apply, though more strict proof might be required of the *bona fides* of the transaction. Here there is nothing to show that there was any dealing or any connexion with the father. No advantage is given beyond what a common mortgagee is entitled to in the ordinary course of business. The whole is mere suspicion, therefore, it would be a dangerous thing to impeach the transaction; and I shall dismiss the bill against the mortgagee.

"The only question is, what is to be done with the costs? If I was satisfied that there was no foundation for the bill, I should dismiss the bill with costs. But I am bound to say, that though I cannot act on suspicion, yet, I think there was so much suspicion about the case that it fairly justified an investigation of the transaction. I think, therefore, that I shall satisfy the justice of the case by dismissing the bill without costs."

NEW STATUTES, EFFECTING ALTERATIONS IN THE LAW.*

BURIALS IN CONTIGUOUS PARISHES.

9 & 10 VICT. c. 68.

An Act for better enabling the Burial Service to be performed in One Chapel where contiguous Burial Grounds shall have been provided for Two or more Parishes or Places.

[26th August, 1846.]

8 & 9 Vict. c. 70.—*Church building commissioners may direct that one chapel shall be used by the different parishes or places for which burial grounds contiguous to each other shall have been provided.—Ministers of each parish may use the chapel.—Same fees payable as are due in parishes for which ground has been purchased.—Whereas an act was passed in the session of parliament holden in the eighth and ninth years of the reign of her present Majesty, intituled "An act for the further Amendment of the Church Building Acts," whereby it was, amongst other things, enacted, that where any land should have been purchased or obtained for any new or additional burial ground not within the bounds of the parish or parishes for the use of which the same should have been so purchased or obtained, it should be lawful for her Majesty's commissioners for building new churches, if they should think fit, in accepting a conveyance of such land for the purposes aforesaid, under the provisions of the therein-before recited acts or any of them, to declare in such conveyance, or by any other instrument under their common seal, that such land should, after the consecration thereof for the purposes aforesaid, be and be deemed to be part of the parish or parishes for the use of which such land should have been so purchased or obtained, and after consecration such land should be part of such parish or parishes accordingly for the purposes aforesaid: And whereas it is expedient that the said provision of the herein-before recited act should be amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That such provision shall extend to any distinct and separate parish, district parish, district chapelry, or consolidated district*

* These two acts conclude the collection in any way relating to the law.

already or to be hereafter formed under the Church Building Acts, and to any new parish already or to be hereafter to be constituted by or under the proceedings of the Ecclesiastical Commissioners of England, and that where any land, wherever situated, shall have been purchased or obtained for the purpose hereinbefore recited, for the use of two or more parishes or places, it shall be lawful for the said commissioners, in accepting a conveyance of such land for the purposes aforesaid, to order and direct in such conveyance, or by any other instrument under their common seal, that any chapel which at the time of such order and direction shall have been or shall be thereafter erected on any portion of such land as aforesaid for the performance of the burial service therein, and any lodge or other building which shall at the time of such order and direction have been erected or shall thereafter be erected on any part of such land, and also any and every access or approach to and from such chapel, lodge, or other building, shall be for the use of all and every of the parishes or places for which such land shall have been purchased or obtained and conveyed as aforesaid, and such order and direction shall be valid and binding; and it shall be lawful for the officiating minister of each parish respectively to use (subject to the regulations herein-after mentioned) the said chapel for the purpose of the burial service therein; and the like fees for the performance of such burials, and for the making, opening, or using any catacombs, vaults, or ground for burials within each such burial ground, shall be due and payable as are accustomed to be taken in the parish for which such burial ground shall have been purchased, obtained, and conveyed as aforesaid; and the use of such chapel, lodge, or other building by such officiating minister for the purpose aforesaid shall be subject to such regulations as the bishop of the diocese shall at any time under his hand and seal make or ordain.

2. *Bishop of the diocese may declare in the sentence of consecration that such chapel is intended for the use of such respective parishes or places.*—That it shall be lawful for the said bishop, in consecrating such chapel as aforesaid for the purposes aforesaid, to declare in the sentence of consecration that such chapel is intended for the use of the respective parishes or places, for the performance of the burial service therein, for which such land shall have been purchased or obtained and conveyed as aforesaid; and if any additional land shall after the consecration of such chapel be purchased or obtained, and conveyed as aforesaid to the said commissioners, as a burial ground, for the use of such parish or parishes, place or places, or for the use of any other parish or parishes, place or places, (such land adjoining or being near to such former land so purchased or obtained and conveyed,) such chapel, subject to the regulations as aforesaid by the bishop of the diocese, may be used for the performance of the burial service in such ad-

ditional ground, and such lodge or other building, and every access and approach to and from such chapel, lodge, or building, may be in like manner used for the purposes aforesaid.

3. *One boundary fence sufficient, unless bishop direct bound stones to be put down for marking boundaries of each parish.*—That for the enclosure of such land one boundary fence around the whole may be declared by such bishop (if he think fit) sufficient, without any sub-division fences enclosing the portions conveyed to the said commissioners for the use of the several parishes or places respectively; but if the said bishop shall think fit he may require such bound stones to be put down as may appear to him necessary for marking the boundaries of the land so conveyed as aforesaid to the said commissioners for the use of the respective parishes.

4. *This act not to authorize any church rate for the repair of the chapel, &c.—A sufficient fund for such repair or sustentation shall be set apart, and vested in the names of trustees.—Vacancies amongst trustees to be filled up.*—That nothing in this act contained shall be construed to authorize any church rate to be made on the said parishes or any of them for the repair or sustentation of such chapel, lodge, or other building, or fence as aforesaid, but such repair or sustentation shall be provided for by such a sum of money as the said commissioners shall consider sufficient; and such sum shall be set apart, and invested in government securities in the names of trustees to be appointed by the said commissioners, and shall be held by such trustees in trust for the purposes aforesaid, and the dividends or annual proceeds arising therefrom shall be applied in and about such repair and sustentation, as and when the trustee or trustees for the time being, with the consent of the bishop of the diocese, shall deem fit from time to time to direct; and in case of a vacancy or vacancies amongst such trustees, the remaining trustees or trustee, and if there shall be no remaining trustee, or no trustee that is capacitated or willing to act, the bishop of the diocese, shall supply such vacancy or vacancies, by the appointment of a fresh trustee or trustees, who shall hold such trust fund, and apply the annual dividends and proceeds arising therefrom jointly with the remaining trustees or trustee, if any, in like manner as the former trustees or trustee in whose room he or they shall be appointed.

MARRIAGES IN IRELAND.

9 & 10 VICT. c. 72.

An Act to amend the Act for Marriages in Ireland, and for registering such Marriages. [26th August 1846.]

7 & 8 Vict. c. 81.—*Marriages intended to be solemnized in Ireland between Parties One of whom resides in England, Notice of the same to be given to the Superintendent Registrar of the District in England within which the Party resides Seven Days preceding, &c.*—6 & 7 W. 4

c. 85. Whereas an act was passed in the session of parliament holden in the 7 & 8 Vict. c. 81, intituled, "An Act for Marriages in Ireland, and for registering such Marriages:" And whereas it is expedient to amend the provisions of the same in respect of marriages of parties, one of whom may reside in England or Scotland: Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in any case of a marriage intended to be solemnized in Ireland between parties one of whom shall be resident in England, such party so resident in England shall give notice in the form used in England in that behalf, or to the like effect, to the superintendent registrar of the district within which such party shall have dwelt for not less than seven days then next preceding, and shall state therein the name and surname and the profession or condition of each of the parties intending marriage, the dwelling place of each of them, and the time, not being less than seven days, during which each has dwelt therein, and the church or other building in which the marriage is to be solemnized, provided that if either party shall have dwelt in the place stated in the notice more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards; and such notice shall be dealt with in such manner, and such certificate shall be given by such registrar in such manner, as is prescribed in an act of the 6 & 7 W. 4. c. 85, intituled, "An Act for marriages in England," provided that in such case such certificate shall not be issued before the expiration of seven days from the entry of such notice as aforesaid; and from and after the expiration of seven days from the issuing of such certificate the production of the same to the person duly authorised under the provisions of the said first-recited act to grant a licence for marriage in such case shall be as valid and effectual to all intents and purposes for authorising such person to grant a licence for marriage, and such certificate shall be as valid and effectual for all other purposes under the provisions of the said first-recited act as any certificate of a registrar of a district in Ireland would be under the said act if such party giving such notice were resident within such district in Ireland, and the other party to such intended marriage were also resident within another registrar's district in Ireland.

2. *Marriages intended to be solemnized in Ireland between Parties One of whom shall be resident in Scotland, a Certificate of the Banns having been published on Three several Sundays in the Congregation of which the Party is a Member to be obtained from the Minister*—That in the case of a marriage intended to be solemnized in Ireland between parties one of whom shall be resident in Scotland, it shall be lawful for such party to obtain from the minister of the congregation in Scotland of which he or she shall be a member for at least one calendar

month preceding a certificate under his hand that banns of such intended marriage of such parties have been duly published or proclaimed in such congregation on three several Sundays; and from and after the expiration of seven days from the granting of such certificate the production of such certificate to the person duly authorized in Ireland under the provisions of the said first-recited act to grant a licence for marriage in such case shall be as valid and effectual to all intents and purposes for authorizing such person to grant a licence for marriage, and such certificate shall be as valid and effectual for all other purposes under the provisions of the said recited act as any certificate of a registrar of a district in Ireland would be under the said act if such party giving such notice were resident within such district in Ireland, and the other party to such intended marriage also were resident within another registrar's district in Ireland.

3. *Places having no parish church, &c., and extra-parochial places having no chapel wherein marriages may be solemnized, to be deemed, for the purpose of this act only, to belong to an adjoining parish.*—And whereas it is by the said act, amongst other things, provided, that no surrogate or other person having authority to grant any licences for marriages shall grant any licence for marriage, not being a special licence, until seven days after notice shall have been given by one of the parties who shall have resided for not less than seven days then next preceding in the parish named in that notice, under his or her hand in the form therein mentioned, to such surrogate or other person having authority to grant licences as aforesaid, which notices he shall file and keep with the records of his office, and that such surrogate or other person shall forthwith send a copy of such notice to the incumbent or incumbents of the parish or parishes in which the parties intending marriage dwell: And whereas certain parishes in Ireland have no parish church or chapel belonging thereto, or no church or chapel where divine service is usually solemnized every Sunday, and certain places are extra-parochial; and it is expedient to make provision for such cases, and other cases, as hereinafter mentioned: Be it enacted, That all parishes where there shall be no parish church or chapel belonging thereto, or none wherein divine service shall be usually solemnized every Sunday, and all extra-parochial places whatever having no public chapel wherein banns may be lawfully published or marriage celebrated, shall be deemed and taken to belong to any parish or chapelry having such church or chapel next adjoining, for the purposes of the said recited and this act only; and where banns shall be published in any church or chapel of any parish or chapelry adjoining to any such parish or chapelry where there shall be no church or chapel, or none wherein divine service shall be solemnized as aforesaid, or to any extra-parochial place as aforesaid, the parson, vicar, minister, or curate publish-

ing such banns shall, in writing under his hand, certify the publication thereof, and act in all things in the same manner as if either of the persons to be married had dwelt in such adjoining parish or chapelry.

4. *When parish church is in ruins, or under repair, &c., banns may be proclaimed, and marriages celebrated in an adjoining parish, &c.*—That if the church of any parish, or chapel of any chapelry, wherein marriages may have been usually solemnized, be in ruins, or be demolished in order to be rebuilt, or for any other cause, or be under repair, and on such account or for any other reason be disused for public service, it shall be lawful for banns to be proclaimed and marriages to be celebrated in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed or marriage is usually celebrated, or in any place within the limits of the parish or chapelry which shall be licensed by the ordinary of the diocese for the performance of divine service, during or by reason of the repair or rebuilding or disuse of the church as aforesaid; and where no such place shall be so licensed, then during such period as aforesaid the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed, or which shall have been specified in the licence; and all marriages heretofore solemnized in other places within the said parishes or chapelries than the said churches or chapels on account of their being in ruins, under repair, or demolished, or taken down in order to be rebuilt, or for any other cause, shall not be liable to have their validity questioned on that account, nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever.

THE SMALL DEBT COURTS.

PROCEEDINGS IN EXECUTION OF THE ACT. —PROPOSED CIRCUITS.

We find in the Morning Chronicle of the 11th inst. a letter from Mr. Bethune to the Lord Chancellor,—setting forth the course adopted for ascertaining the proper and convenient places at which the New Small Debt Courts may be held.

This is rather an unusual mode of constituting courts of justice and establishing a new system of judicature throughout the country, but whether announced in the London Gazette, or in one or more of the daily papers, (and not in the legal periodicals,) we are duly thankful for the information, and presume we only discharge our duty in giving it an early place in our columns.

Mr. Bethune has set forth his labours with many explanations and much fulness

of detail and circumstantiality. For these we must find room immediately.

“Home Office Chambers, Dec. 19, 1846.

“My Lord—I have the honour to report to your lordship my proceedings in compliance with your lordship's instructions, conveyed to me in your letter of the 16th of September last, respecting the districts to be formed for the purposes of the Act for the Recovery of Small Debts.

“Having procured outline maps of the proposed districts, (or circuits, as they ought rather to have been called,) I sent them, with a statement of the particulars of each circuit, to the clerks of the peace for the several counties; and requested that they would endeavour to ascertain the opinions of those persons whom they considered qualified, from local knowledge, to give advice on the subject. It had been my wish that these documents should be in the hands of the clerks of the peace before the Michaelmas quarter sessions, in order that the matter might be considered by the magistrates at their quarterly meeting; but I was not able to accomplish this part of my plan. Nevertheless, I have reason to know that sufficient publicity has been given to the details of the proposed division.

“I wish to take this opportunity of acknowledging the courtesy with which my inquiries have been answered by the clerks of the peace, without one exception, and the assistance I have derived from the information readily furnished to me by every one of whom I have had occasion to request it. Magistrates, and others acquainted with the country, have also sent to me many suggestions, all of which I have very carefully considered, and, in several instances they have kept me from making important mistakes.

“It is with great satisfaction that I inform your lordship that the selection of court towns and the arrangement of the circuits is generally considered judicious. Some obvious blunders and omissions have been pointed out, which are corrected in the amended list which I have annexed to this report.

“In two or three instances I have received contradictory statements respecting the same towns, but these cases are so very few in number, and the great majority of those persons who have made suggestions on the subject agree so well in their recommendations, that I have great confidence in the soundness of the general plan.

“It must, however, be borne in mind, that all that has been hitherto published is a list of the towns in which it has been proposed to hold courts, and a general description of the circuit which is intended for the jurisdiction of each judge. No particulars have yet been given of the manner in which it is proposed that the country comprised within the circuit of each judge shall be divided among the different court towns. I cannot anticipate that this subdivision will not be found open to many more objections than have been brought against the

choice of the court towns and the limits of the whole circuits. It is obvious that the difficulty of a satisfactory division becomes greater as the division of the country is carried further, and I think it extremely probable that many improvements can be suggested in most of the districts which I have assigned to each court.

"The basis of the whole scheme is the division of the country which has been already made under the authority of the Registrar-General of Births, Deaths, and Marriages. Those districts are, in most cases, contemporaneous with the poor-law unions, and have been formed after local inquiry and consideration of those circumstances which connect the several parishes. I considered, therefore, that it was far more probable that a convenient division would be obtained by using these districts, than by attempting a new arrangement of the 25,000 parishes and townships of England and Wales, on any notion of contiguity or apparent convenience derived from mere inspection of the map, which I know, from frequent experience of similar undertakings, to be very fallacious. Even where I believed that the division might be improved, I considered it to be preferable, on the whole, to adhere to those recognised divisions, unless where the inconvenience of doing so was very great and obvious. But this principle could not be adhered to throughout. The number of superintendent registrars' districts in England and Wales is 619: the number of court towns which have been considered sufficient for the purpose of the Small Debts Act, exclusive of the metropolitan courts, is only 454; and although two or more districts are in some instances arranged round a large town, so as to allow of their being annexed to it, yet many still remained which it became necessary to divide, in consequence of there being no town of sufficient importance to justify the establishment of a court in the district.

"In every case where I have had to divide a district, I have endeavoured, as far as possible, to adopt the Registrar-General's division into sub-districts, for the same reasons as those above stated. In many instances, however, even these divisions were not suitable for the purpose; and I have been forced to specify particular parishes or townships. In only one instance beside the metropolitan courts have I carried the division beyond parochial or township boundaries.

"There are, in the annexed lists, exclusive of the metropolis, 265 towns, to which a single superintendent registrar's district is annexed; 71, to which several undivided districts are annexed; and 118, which include separate sub-districts, or single parishes.

"It will be comparatively easy to improve the division, when the courts shall have been for a little time in operation. Where separate clerks are attached to each court, some of them, indeed, will obviously have an interest in objecting to future improvements of the districts; which, by lessening the jurisdiction of the court to which they belong, may curtail

their emoluments; but, even supposing them to be unduly influenced by such considerations, yet the judge, who presides over each district in person, can have no reason for not wishing to make them all as generally convenient as possible; and they will be enabled, by a very short experience of the proposed districts, to ascertain what changes in them are desirable. These may then be effected, under the powers of the act, by the same authority as that by which the districts are first constituted. Looking forward to such suggestions being made and acted upon, I have attached much more importance to making the outward boundary of the circuits unexceptionable than to perfecting every particular of the subdivision into court districts.

"There are many cases in which two, or even three towns of nearly equal importance, are each situated near the extremity of the district in which they are included. I have considered myself bound, by the terms of your lordship's instructions, to select one town in every such case as that in which the court is to be held; but there can be no doubt that the convenience of the inhabitants would be most effectually consulted by ordering the court to be held alternately in each of them. One of the strongest cases in point is in the Isle of Anglesey. The principal population of the island is in the three towns of Amlwch, Holyhead, and Beaumaris, all on the coast at different sides of the island. It would be very inconvenient for the inhabitants of any two of these towns to resort to a court at the third. Llangefui has consequently been fixed upon as most central for the whole island; but it cannot be doubted that a far more satisfactory arrangement would be by ordering the court to be held alternatively at Amlwch, Beaumaris, and Holyhead; even though in each case it should be held once only in three months, instead of every month at Llangefui, as now proposed; leaving it to be settled by the practice of the court to which town defendants should be summoned. Sandwich and Deal, in Kent; Trowbridge and Melksham, in Wiltshire; and many other such instances might be cited, to which the same remark is applicable. That system is now acted on under the acts constituting several Courts of Requests, which authorize the holding of the court in more than one town; it is thoroughly well understood, and leads to no practical inconvenience.

"I have thought it right to make this suggestion to your lordship, because I am convinced that the adoption of it would obviate, in several cases, objections which may, with much show of reason, be made against the proposed districts.

"Two circuits have been added to the number formerly proposed, in consequence of the Welsh circuits and those of the eastern counties having appeared too laborious. On the other hand, one has been suppressed in Lancashire, in consequence of an enlargement of the jurisdiction of the Liverpool court. The whole number, therefore, including the eight metropolitan

circuits, is 60; and the whole number of towns where courts are proposed to be held, exclusively of the metropolis, is 454.

"The limits of the circuits have been fixed mainly by reference to the population, and to the number of court towns in each. The whole population within the limits of the act was, in 1841, 15,769,361. This gives, for the average, about 263,000. The circuits have been so arranged, that the population of only one circuit differs from the average by more than 50,000; twenty-six are within 25,000 of the average; seventeen are more than 25,000 below it, and sixteen more than 25,000 above it. Mid-Wales, the least populous circuit, contains 202,713 persons; and Hampshire, the most populous, 312,220. The act directs that a court shall be had in each town at least once a month, unless by leave of the Secretary of State; and the number of court towns, as at present fixed, does not, in any circuit, exceed twelve.

"It may be thought that population alone is not well suited for the basis of this division, inasmuch as it is certain that a far greater amount of business is to be expected from a dense town population than from the same number of people scattered over an agricultural district. On the other hand, it is to be remembered that the labour of the judge will be increased in the latter case, by the great number of towns which he will be required to visit. It is also remarkable, that as far as can be ascertained from the returns of business in the existing Courts of Request, density of population alone is not a safe criterion of the amount of business. In the courts of Halifax, in the West Riding of Yorkshire, and at Bristol, the returns show a number of suits corresponding to 50 in the year for each 1,000 persons. In some of the equally populous districts of Lancashire, returns of the same kind, from courts possessing similar jurisdiction, are as low as 5 per 1,000.

"In the absence, therefore, of any better test of the proper extent of each circuit, I have adopted that of population, allowing those limits of deviation which I have already mentioned.

"The limits of the district of each court have generally been determined by reference to size, rather than population. From your lordship's instructions to me, I understood it to be your wish that the distance of seven miles should be considered as the average range of jurisdiction for each court. Of course it has not been possible to observe this rule otherwise than approximately. It was necessary to select the principal towns of each county; and their situation and the nature of the intervening country occasioned much necessary deviation from the standard. Nevertheless, the average result approaches very nearly to it.

"The number of court towns assigned to each circuit was determined, by reference to what appeared advisable, on a separate examination of each county, in general conformity with the standard of seven miles. The whole number of court towns obtained in this man-

ner is, as already mentioned, 454, exclusive of the metropolis. The whole area of England and Wales, exclusive of the metropolis, is 57,735 square miles; and if this space be supposed to be covered by 454 equal regular hexagons, the radius of the circle circumscribing each differs by seven miles by less than twenty feet.

"Undoubtedly, so very close an approximation by the average to the proposed standard must be looked upon as accidental; but the proposed scheme of division will bear an application of the same test in more detail, although, of course, with greater deviations from the standard.

"It is not easy to try each county separately, because many court towns are situated near the borders of the counties in which they lie, and their districts include considerable parts of the adjoining counties, of which I have no measure. But, by collecting several counties together, these sources of error are much diminished, and the united area of several counties may be considered as nearly representing the districts of the towns which are in them.

"If, for the purpose of applying this test, England and Wales is divided by a line from the Bristol Channel to Boston Deep, separating Wales and eighteen English counties (nearly comprised in thirty-one circuits), on the northern side, from twenty-two counties (nearly comprised in twenty-nine circuits) on the southern side, the population north of this line, in 1841, was 8,119,585, and south side of it 7,787,156. The average size of the 251 court districts, in the counties north of this line, exceeds the standard of seven miles by less than 61 yards; and the average size of the 203 districts in the counties south of it, exclusive of the metropolis, falls short of seven miles by about 90 yards. If, beginning from this great natural division, we further sub-divide the country into the following eight groups of counties, the figures set against them show the area, number of courts, and average distance from the court town to the extremity of the district in each group, determined in the manner above explained.

	Area in Square Miles.	Number of Court Towns.	Average Distance in Miles.
Northumberland	5,253	32	7.9
Durham			
Cumberland			
Westmoreland	7,602	67	6.6
Lancashire			
Yorkshire			
Lincolnshire	5,431	39	7.3
Leicestershire			
Rutlandshire			
Nottinghamshire	6,558	70	6.
Derbyshire			
Cheshire			
Staffordshire	6,558	70	6.
Shropshire			
Warwickshire			
Worcestershire	6,558	70	6.
Herefordshire			
Monmouthshire			

	Area in Square Miles.	Number of Court Towns.	Average Distance in Miles.
Wales	7,425	43	8.2
Norfolk	9,382	73	
Suffolk			
Essex			
Hertfordshire			
Middlesex			
Cambridgeshire			
Huntingdonshire			
Northamptonshire	6,893	63	6.5
Buckinghamshire			
Bedfordshire			
Kent			
Surrey			
Sussex			
Hampshire			
Berkshire	9,191	67	7.3
Oxfordshire			
Gloucestershire			
Wiltshire			
Dorsetshire			
Somersetshire			
Devonshire			
Cornwall	57,735	454	7.
England and Wales (exclusive of the Metropolis)			

"These general results appear to me to warrant my assuring your lordship that the principle of division which you desired to adopt has been, as far as possible, faithfully and systematically observed.

"Although population has not been made the basis of division for the separate districts, yet 343, or nearly three-fourths of the whole number, range from 10,000 to 40,000. The following summary shows how the whole population is distributed:—

29 Districts under 10,000 averaging rather less than 8,000	224,965
343 Districts, from 10,000 to 40,000, averaging about 22,000	7,576,808
53 Districts, from 40,000 to 70,000, averaging more than 50,000	2,674,850
17 Districts, from 70,000 to 100,000, averaging about 82,000	1,395,893
12 Districts exceeding 100,000, averaging 170,000	2,045,734
11 Metropolitan courts	1,851,111
	15,769,361

Population not included in the foregoing districts:—

East London	39,655
City of London	55,967
West London	33,629
Police in Middlesex, Surrey and Kent	3,090
Barracks, hospitals, and hulks in Kent	5,127
Travellers	4,890

Population in 1841, as per account (52) 15,911,725

"Usk, in Monmouthshire, is the least populous, containing only 4,126 persons. Twelve others are under the average of this class. Of the whole 29, 14 are in the mountainous parts

of the four northern counties, and in Wales, and Monmouthshire.

"The twelve most populous districts, out of the metropolis, are Liverpool, Manchester, Birmingham, Bristol, Leeds, Sheffield, Nottingham, Bradford (West Riding), Newcastle-on-Tyne, Plymouth, Halifax, and Norwich; only three of this class—Bristol, Norwich, and Plymouth, and only three of the class next below it—Bath, Portsmouth, and Exeter, are in the southern division of the country. It deserves to be noted, as giving an idea of the comparative magnitude of the metropolis, that the twelve most populous provincial districts, including the largest towns and extensive adjoining tracts of land, amounting in all to nearly 1,000 square miles, only just surpass the population which it contains in about 70 square miles. If the same comparison is made within the limits adopted by the registrar-general, the population of the metropolis exceeds the united population of the twenty largest provincial towns in England, including every one which has more than 40,000 inhabitants.

"In order to compress this report as much as possible, I have defined the districts in the annexed list, by merely stating the names of the superintendent registrar-general's districts, where the whole is to be included within the jurisdiction of the same court; and, as these are divisions recognised by law, I see no inconvenience in adopting these descriptions in the orders constituting the courts. Most of them, are identical with the poor-law unions, and in that case are well known in the country. But even where this is not so, it will be easy for the officers of the court to obtain from the registrar-general's officers a detailed enumeration of the parishes and townships of which each district consists, and these may be published in the neighbourhood of each court. Owing to the provision of the Registration Act, by which the poor-law unions were adopted for the purposes of that act, it happens, I believe in many instances, that detached portions of parishes are included in districts in which they are not locally situated. It will be well to remedy this inconvenience with respect to the jurisdiction of the new courts; for which purpose, the orders in council should contain a declaration that all such detached lands are to be deemed within the jurisdiction of the court within the precincts of which they lie.

"For convenience of reference, I have added to the particulars of the districts a list of court towns, arranged alphabetically in their several counties, with an indication of the circuit to which each belongs. In the headings of the circuits I have indicated only those counties to which any court town in the circuit belongs. It happens in a great number of cases that the boundary of the county is disregarded in the formation of the district; and this must be provided for in the orders in council, by a special declaration, such as is warranted by the act, for declaring all such places which are in an adjoining county to be within the jurisdiction of the court to which they are annexed. For

Greater precaution, it may be well to annex this declaration to the order for constituting each court.

"The Act empowers her Majesty, by order in council, to direct that any of the courts of request mentioned in either of the schedules annexed to the act shall be holden as a county court, with such alteration of district as may appear advisable; and, in any such case, guarantees to certain officers of the court an appointment to the like office in the court so substituted. There is also a power of abolishing any of the said courts of request. Conceiving that the intention of the legislature was to preserve to these officers their present offices unimpaired, as far as might be consistent with the general scheme, I have examined the list of towns in which courts are now held under the several acts mentioned in the schedule, and find that, with very few exceptions, this substitution can be made in a satisfactory manner.

"In the annexed list, I have set opposite the name of each town in which a court is now held the name of the town, which is either the same, or appears to me most nearly to represent the same district. I am not sure that this list is quite accurate, because some of the acts, after specifying particular towns in which courts are to be held, give a general power of holding them in any other convenient place within their jurisdiction; and I do not know, in every case, how far this power has been used. A few complex cases occur, on which I have made special explanatory notes.

Here follows the list of the towns at which the existing courts are held, and next various notes thereon from A to Z, explaining the peculiar circumstances relating to a considerable number of such courts. The letter thus concludes:—

"I have had some doubts whether the letter of the act, strictly taken, will authorise the substitution of several courts for one, in the manner in which I have in some cases set them down, but, assuming the information on which the list is made out to be free from error, there can be little doubt that it is the most effectual way of carrying out its spirit; and any technical doubt which might arise on the subject can be completely removed in each case, if the judge who, subject to your lordship's approval, has the patronage of those offices to which there is no vested right, will confirm each of the appointments on which any such doubt might be entertained. If your lordship has the same view of the intentions of the act, I apprehend that there would be no difficulty in suggesting this as a proper course to be taken.

I have the honour to be, my lord, your lordship's obedient servant,

"J. E. D. BETHUNE."

This letter is followed by the proposed metropolitan courts in Middlesex, Surrey, and Kent, and the list of court towns arranged in counties. These will be given in our next number.

BANKRUPTCY AND INSOLVENCY REFORMS.

THE following letters will show the present state of the proposed alterations in the Law of Bankruptcy and Insolvency. The first is from Mr. Hawes, the Chairman of the Society for promoting these Reforms, and the second from Mr. Vizard, the Lord Chancellor's Secretary of Bankrupts, addressed to Mr. Curtis, the Secretary of the Society.

"*Lambeth, Dec. 15th, 1846.*

"Bankruptcy and Insolvency Law Amendment.

"SIR,—I have the honour to send you a copy of a letter which has been received from Mr. Vizard, the Lord Chancellor's Secretary of Bankruptcy, informing the committee that several of the clauses of the bill drawn by them, and presented to the House of Commons by Mr. Hawes, will in all probability be adopted by the Lord Chancellor in his new measure to amend and consolidate the statutes relating to bankrupts and insolvents.

"As soon as the committee receive the copies of the bills referred to, they will be carefully considered, and a report upon them submitted, with as little delay as possible, to the subscribers.

"I am, Sir, your most obedient servant.

"WILLIAM HAWES, Chairman."

"*Secretary of Bankrupts' Office,
Dec. 10, 1846.*

"SIR,—In reply to your letter of the 4th, I beg to inform you that I have prepared a bill to amend the laws and consolidate the statutes relating to bankrupts, in which I have inserted several of the clauses from Mr. Hawes's bill. This new bill will be circulated, and you shall have a copy; but the Lord Chancellor has begged it may not go out until he has considered it.

"I shall be happy to see you and any other gentlemen who take an interest in the subject; but I submit to you that this will be better postponed until you have seen the bill, to ascertain how far it meets your wishes. There will be a separate bill for insolvency.

(Signed,) "WILLIAM VIZARD."

"John Curtis, Esq."

HILARY TERM EXAMINATION.

THE examiners appointed for the examination of persons applying to be admitted attorneys, have appointed *Thursday* the 21st day of *January*, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, in order to be examined. The examination will commence at ten o'clock precisely.

The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved

by the judges, must be left on or before Monday, the 18th January, with the secretary of the Law Society.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally, but the articles must be left within the first seven days of term, and answers up to that time.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity and Practice of the Courts. 5. Bankruptcy and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the preliminary questions (No. 1.); and it is expected that he should answer in *three* or more of the other heads of inquiry. *Common Law* and *Equity* being two thereof.

SOLICITORS' COSTS OF FIAT ON BANKRUPT'S PETITION.

To the Editor of the *Legal Observer*.

SIR,—A matter of considerable importance to the profession has occurred under the following circumstances:—

I issued a fiat against a trader on his own petition, upon which he was declared a bankrupt, and official and creditors' assignees duly appointed. The bankrupt's final examination has been adjourned *sine die*. The assets realized were about 60*l*. (and it is expected a sum of about 10*l*. more may at a future day be collected, but this is uncertain; in all other respects it may be said there is no estate to be administered, the bankrupt having mortgaged all his property for considerably more than its value; there is no dispute about this part of the case;) and thereout the official assignee paid the sums of 20*l*. and 10*l*. to the Accountant-General, pursuant to sections 46 & 55 W. 4, c. 56, and there is a balance in his hands after paying messenger's bill, &c., of 1*l*. 10*s*. No part of the petitioner's taxed costs have been paid. Referring to the recent cases,—*Ex parte Teague, in re Berrenger*, 1 De Gex, and L. O. 9th May, 1846; *Ex parte Parsons, in re Fulgen*, and *Ex parte Buchanan, re Birley*, Jurist, No. 499, vol. 10; *Ex parte Jerwood, in re Dockerey*, No. 507, vol. 10; and *Ex parte Sylvester, in re Henry Deacon*, *Times* newspaper, 3rd Dec. last, I was inclined to think I might get the petitioner's costs on petition, as in the above cases, and I asked the opinion of counsel engaged in one of the above petitions, whether I could do so successfully, and he informed me that inasmuch as creditors' assignees had been appointed, the above sums of 20*l*. and 10*l*. could not be applied in payment of these costs solely on the ground of the appointment of creditors' assignees. Having obtained counsel's opinion, it may be said I

should be satisfied, but I trust you will excuse me canvassing the matter, and through the medium of your intelligently-conducted journal obtain, if possible, a little more light on the subject. It is important to observe the periods at which the official assignee is directed to invest the monies, under 1 & 2 W. 4, by sect. 46, the sum of 20*l*. is to be paid to the Accountant-General "out of the first monies that shall come to his hands immediately after the choice of assignees by the commissioners," which I construe to mean the appointment of official assignee, because the second mentioned sum (10*l*.) by sect. 55 "is to be paid by the official immediately after the choice of assignees by the creditors, or so soon afterwards as a sufficient sum shall come into his hands for the purpose, over and above the sum hereinbefore directed to be paid by such assignee." It strikes me that if the Court of Review considered that the payment of the 20*l*. to the Accountant-General precluded the judge from dealing with that sum, he would not have made the order in *Ex parte Buchanan, re Birley*. The language of the chief judge in the last-mentioned case inclines me to differ with the opinion of counsel, in my case, as in *Buchanan's*, "the machinery provided for the distribution of the bankrupt's effects was put in motion (and the sums of 20*l*. and 10*l*. realized) through my instrumentality alone, without the creditors receiving any benefit whatever." The appointment of creditor's assignees, as it seems to me, ought not to affect the question of the petitioner's right to be paid his cash out of the fund in the hands of Accountant-General, inasmuch as their appointment has not altered the condition of the bankrupt's estate in any one point of view. In fact, there is, in my case, no estate capable of vesting in the assignees, and therefore, their appointment is, for any beneficial purpose, nugatory. If the appointment of creditors' assignees and their acceptance of the trust imposed upon them personally the payment of the petitioner's costs of the fiat, then indeed I can see a wide difference and sound reason for the court refusing to make an order for payment of those costs out of the fund in court. I admit the choice of creditors' assignees authorizes the payment by the official assignee of the 10*l*. on their appointment, but I contend that the mere compliance with the requisitions of the act of parliament does not dispose of the question as to how the fund in the hands of the Accountant-General is to be applied.

Upon a review of the reported cases, and considering the circumstances detailed relative to my individual case, I would suggest the fair way of putting the question should be as follows, viz.:—

Is the judge of the Court of Review so far fettered by the stat. of W. 4, as to preclude him from interfering with the sums in the hands of the Accountant-General by reason of the appointment of creditors' assignees, or can he, in the exercise of his judicial functions, apply any part of that fund in liquidation of the petitioner's costs of the fiat, upon the principle established in *Ex parte Buchanan, re Birley*.

I will only add that myself, in common with many others similarly circumstanced, will feel deeply obliged by your insertion of this letter, and for any information you may be able to afford on a matter affecting the interests of the profession generally. Perhaps some of your correspondents familiar with bankruptcy practice may be disposed to assist my inquiries.

A SUBSCRIBER.

RENEWAL OF ATTORNEY'S CERTIFICATES.

First day of Hilary Term, 1847.

The following notices have been given of application on the 1st day of Hilary Term, 1847, for leave to take out certificates pursuant to judge's orders.

Bernard, Edward Westland, 60, Albany Street, Regent's Park, and Park Street, Grosvenor Square.

Dabbs, John, Leicester, and Stoke-upon-Trent. Goodeve, Joseph, 14, John Street, Bedford Row, and Grenville Street.

Hope, Ashfield Church, 3, Frederick's Place, Old Jewry, and Southampton Row.

Ingleby, Christopher, Lawkland Hall, near Settle, and Knaresborough.

James, James, 18, Clement's Inn, and Gray's Inn Square.

Leathes, Hugh Stanger, jun., 8, Old Dorset Place, Clapham Road.

Osbaldiston, Francis James, St. Alban's.

Parkes, Thomas William, Hereford, and 12, North Terrace, Camberwell.

Ransom, Henry Starling, Holt.

Salt, George Moultrie, 5, Caroline Street, Bedford Square.

Webb, Henry, 13, Clement's Inn, Great Tower Street, and Tunstall.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

PLEADINGS.

ADMINISTRATOR.

Parties.—By a decree the bill was dismissed as against *A.*, one of the defendants, and he was to be paid his costs. A bill was afterwards filed to set aside that decree; and *A.* being dead, letters of administration to him, limited to the purposes of the suit, were taken out, and the limited administrator was made a party to the suit: *Held*, that *A.* was not properly represented in the suit, as it sought to deprive his estate of a benefit. *Davis v. Chanter*, 14 Sim. 212.

AMENDED BILL.

New issue.—Where a defendant raised a new

issue by his answer, and the plaintiff proceeded to the hearing without amending his bill, the court, under the circumstances of the case, directed the plaintiff to amend his bill by charging the new matter insisted on by the answer. *Watts v. Hyde*, 2 Coll. 368.

AMENDMENT AFTER HEARING.

New charges affecting former defendants.—An order made at the hearing, that the cause should stand over, with leave to amend by adding proper parties, and apt words to charge them, or to show that other parties are not necessary, or to file a supplemental bill, does not entitle the plaintiff to introduce by amendment any charge against the original defendants, which is not necessary to explain the amendment. *Gibson v. Ings*, 5 Hare, 156.

ANSWER.

1. *Insufficiency.*—*Forfeiture.*—Testator, after giving certain benefits to his heir, revoked them in case she should ever dispute his will or his competency to make it, or should not confirm it when required, or should not resist any proceeding, by the result of which a greater benefit might be attainable by her than was intended by the will. A bill, against the heir and others, to establish the will and carry the trusts into execution, contained statements and interrogatories founded on them, relating to the testator's sanity, and to the heir having refused to confirm the will: *Held*, that the heir was not bound to answer any of the interrogatories relating to the testator's sanity, notwithstanding the revocation-clause might be invalid, or she might have made an admission, in her answer, which subjected her to its operation, if it were valid. *Cooke v. Turner*, 14 Sim. 218.

2. *Production of papers.*—A defendant, in his first answer, stated, that certain papers in another suit referred to in the bill, were in possession of his solicitor, and being asked by the amended bill to set forth a schedule thereof, he stated, that his solicitor had made diligent search for them, but that they could not be found, having been misplaced or mislaid in the solicitor's office; and that, therefore, he could not set forth a schedule of them: *Held*, that the answer was insufficient. *Ellwand v. M'Donnell*, 8 Beav. 14.

3. *Production of papers.*—An Irish insurance company were enabled to sue, and liable to be sued, in the name of one of their members. An assurance was effected through *A.* their English agent, who was not a member at the time, but afterwards became one. The insured filed a bill respecting the policy against *A.* while he was a member, which charged, that he and the company had in their possession documents relating to the matters, &c., and required him to set forth a schedule thereof. *A.* afterwards transferred his shares and ceased to be a member, and shortly afterwards put in his answer, stating that he had not, and was not entitled to have access to the company's papers, and could not set forth whether they had any documents in their possession, or set forth a

schedule thereof: *Held*, that the answer was sufficient. *Ellwand v. M'Donnell*, 8 Beav. 14.

4. *Supplemental*.—Leave given, after cause at issue and in the paper, to file a supplemental answer to correct an important date.

A defendant insisted on his discharge under the Insolvent Act in 1835, in bar. After the case was in the paper, he discovered that the discharge took place in 1836. A discharge in 1836 would be a good defence, but the discharge in 1835 would not. Permission was given to file a supplemental answer to correct the date.

A defendant asking leave to file a supplemental answer, must distinctly state the terms of the answer intended to be filed. *Fulton v. Gilmour*, 8 Beav. 154.

BILL.

Revivor.—A defendant who had been served with a copy of the bill died without having appeared. *Held*, that his personal representatives must be brought before the court; and that, for that purpose, an original bill, and not a bill of revivor, must be filed. *Hardy v. Hull*, 14 Sim. 21.

See *Amended Bill; Amendment after Hearing*.

BANKRUPT.

Semble, that, upon a bill filed by assignees of a bankrupt against a judgment creditor of the bankrupt, impeaching the alleged amount of the judgment debt, and praying an account, it is a good ground of equitable relief that, at the time when the action in which the judgment was obtained was commenced, the bankrupt was in pecuniary difficulties, and was pressed for payment of his debts by several of his creditors, and that he was unable, by reason of such difficulties, to attend to the defence of the action. *Boyd v. Moyle*, 2 Coll. 324.

EXCEPTIONS.

Leave given to file exceptions *nunc pro tunc* on payment of costs, under peculiar circumstances. *Majoribanks v. Hovenden*, 8 Ir. Eq. Rep. 317.

FOREIGN JUDGMENT.

A plea of the judgment of a foreign court must show, not only the identity of the subjects in contest, the competency of the tribunal, and the finality of the judgment, but also the identity of the issue, and that it was decided on its merits. *Garcias v. Ricardo*, 14 Sim. 265.

HEARING.

See *Amendment after Hearing*.

MULTIFARIOUSNESS.

1. An account of rent and mesne profits decreed under circumstances of complexity of title occasioned by the acts of the tenant, and in order to avoid a multiplicity of suits; the bill also seeking the delivery of a deed to be cancelled.

Semble, That if a demurrer for multifariousness cannot be taken to a bill because it contains a charge of collusion between the several defendants, and the plaintiff fail to prove the

collusion, the objection may be taken at the hearing. *Nixon v. Robinson*, 2 J. & L. 4.

2. To a bill filed by the assignees of a bankrupt against a creditor, impeaching the amount of a debt for which the creditor had obtained judgment and taken the bankrupt's goods in execution, and praying an account of the dealings and transactions between the bankrupt and the creditor, a general demurrer for want of equity was allowed.

After judgment and execution obtained by a creditor against his debtor, the debtor becomes bankrupt, and his goods are seized by the messenger. The creditor then brings trover against the assignees, and trespass against the messenger. Upon a bill filed by the assignees against the creditor to enforce a substantial right in equity in respect of the bankrupt's goods, it is not an objection for multifariousness, that the bill prays an injunction to restrain both actions. Effect, as between co-defendants, of the 23rd Order of Aug. 1841. *Boyd v. Moyle*, 2 Coll. 316.

PARTIES.

1. *Partnership*.—If the business of a numerous partnership has ceased, or been suspended, a bill may be filed by some of the partners on behalf of themselves, &c. to have the necessary accounts taken and the affairs of the partnership wound up; but if the bill asks, in addition to that relief, that the partnership may be dissolved, all the members, however numerous, must be parties to it. *Deeks v. Stanhope*, 14 Sim. 57.

Cases cited in the judgment: *Evans v. Stokes*, 1 Keen, 24; *Long v. Yonge*, 2 Sim. 369; *Wallworth v. Holt*, 4 Myl. & Cr. 619.

2. *Fraud*.—A bill was filed for relief against a conveyance of real estate, made fraudulently to defeat a sequestration of the privy council: *Held*, that a person alleged to have concurred in the fraud, and to whom an outstanding term had been assigned to attend the inheritance, was properly made a party to the suit. *Taylor v. Wyld*, 8 Beav. 159.

3. *Legatee*.—A. and B. having been co-executors, and A. having survived B., the representatives of A., many years after the testator's death, filed a bill against the representatives of B. to recover assets of the testator alleged to have been possessed by B. The bill did not state that any debts or legacies of the testator's were unpaid, or that there was any residuary legatee, or that the plaintiff or any other person was beneficially interested in the assets. There was, however, in fact, a residuary legatee, and the other defendant: by their answer objected, that such legatee ought to have been made a party to the suit: *Held*, that the objection was valid. *Adams v. Barry*, 2 Coll. 285.

4. *Preliminary inquiries*.—*Legatees*.—*Appointment*.—The plaintiff, under a will, claimed a fund over which the testatrix had a power of appointment, and which was subject to a gift over in default of appointment, to the children of the donor to the power. The trustees did

not admit that the will was an effectual appointment. *Held*, that, although the plaintiff's title was not admitted, it was a case in which the persons entitled in default of appointment were necessary parties, and where the court, therefore, would, under the Order 5 of the 9th of May, 1839, direct preliminary inquiries to ascertain who were such persons. *Johns v. Dickinson*, 5 Hare, 130.

5. *Annuity*.—The court having decided that the plaintiff was entitled to an annuity on the lands of G., on which certain persons not parties to the suit were entitled to a charge; and a question of priority having arisen between the plaintiff and them, the cause stood over to make them parties. *Held*, that they must be made answerable parties, and that it was sufficient to serve them with notice under the 15th General Rule of March, 1843.

Leave given to the plaintiff to move for a receiver in a suit defective for want of parties under particular circumstances. *Sullivan v. Sullivan*, 8 Ir. Eq. Rep. 72.

6. *Supplemental bill*.—The inheritor is a proper party to a supplemental bill filed for the purpose of making incumbrancers parties, when there has been a decree for a sale in the original cause.

Judgment creditors, who are parties in their rights in the original cause, are not necessary parties in the supplemental cause.

Where the original bill was filed under the old practice, omitting to make puisne judgment creditors parties, and they were made notice parties to a supplemental bill filed since the new general orders: *Held*, that they were sufficiently before the court, leave being given to them to surcharge and falsify the accounts in the original cause within a limited time.

Held, also, that judgment creditors, whose judgments were obtained *pendente lite*, but affected the legal estate, were proper parties to the supplemental bill, and that it was sufficient to make them notice parties. *Rutledge v. Rutledge*, 8 Ir. Eq. Rep. 84.

7. *Alien*.—A principal, after selling a portion of his property to an agent, devised his property generally to his wife, an alien, for life, remainder to his children after her death. A bill was filed by the children to set aside the sale: *Held*, that the Attorney-General was properly made a defendant in respect of the wife's interest, though no office was found. *Murphy v. O'Shea*, 8 Ir. Eq. Rep. 329.

And see *Partners and Policy*.

PARTNERS.

Parties.—A defendant to a suit for winding up a partnership has a right to insist that the suit shall be so constituted as that the decree may be binding on all the parties to the partnership contract; and, therefore, a bill by one against another of five partners in a joint speculation, for an account and payment of the defendant's contributory share of an alleged loss on the winding up of the concern, was held to be defective as to parties, although it was alleged and proved that the plaintiff had, as

managing partner, made all the advances himself, and that he had settled with and released the co-partners; and it was held that an undertaking by the plaintiff to bear any liabilities which, on taking the accounts, might appear to subsist against the absent partners in favour of the defendant, would not cure the defect. *Hills v. Nash*, 1 Phill, 594.

POLICY OF INSURANCE.

Premium.—*Parties*.—Three directors who signed a policy, filed a bill on behalf, &c., praying, on allegations of fraud and misrepresentation, that it might be delivered up to be cancelled, "or that they might be otherwise relieved therefrom, and in such manner as the court might think fit;" but the bill contained no offer to pay back the premiums. *Held*, first, that if such an admission were necessary, the prayer sufficiently implied it; and secondly, that the board of directors who managed the affairs of the company were not necessary parties. *Barker v. Walters*, 8 Beav. 92.

REVIVOR.

See *Bill*.

SHIP.

A bill for an account of the earnings of a ship described some of the owners as being resident in England, and the others in India, and stated the ship to have been built by B. & Co. of Newcastle; but it did not contain any positive averment that the ship was British built.

Held, that, for want of such averment, a demurrer founded on the Ship Registry Acts could not be supported. *Smith v. Small*, 14 Sim. 119.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

M'Mahon v. Burchell. Dec. 3rd, 1846.

OCCUPATION-RENT BETWEEN TENANTS IN COMMON.—EQUITABLE SET-OFF.—COSTS.

A freehold house was devised to several tenants in common, some of whom afterwards resided in it, but not under any agreement to pay rent, nor to the exclusion of the others. *Held*, that no rent accrued in respect of such occupation; and consequently, that the Master could not take the same into account for the purpose of establishing an equitable set-off against a legacy claimed by any one of such occupants from the executors of one of the deceased tenants in common.

Costs will not be allowed to a party in proceeding under an erroneous order of the court.

In this case the plaintiff had filed a bill for himself and wife against the executors of the

will of his deceased sister for the payment of legacies bequeathed by her to him and his wife. The executors in their answer admitted sufficient assets, but stated that the father of the plaintiff and testatrix had devised certain property to his children (7 in number) as tenants in common; that the plaintiff, with three others, (of whom the testatrix was not one,) occupied a house so devised for several years, whereby, as the defendants submitted, occupation-rent to a considerable amount became due, and they claimed for the estate of the testatrix and as a set-off against the said legacy bequeathed by her to the plaintiff, a proportionate share of what the Master should find due from him in respect of such occupation. The plaintiff then amended his bill, and stated that he had occupied it, but not in exclusion to the other tenants in common; that he had occupied the house as administrator of his father's will, the executors of which had renounced probate; and that the claim for such rent (if any) was barred by the Statute of Limitations. The defendants did not put in any further answer; and Vice-Chancellor Wigram (3 Hare, 97) decreed payment of the legacies, subject, as to the plaintiff's legacy, to such equitable set-off as the Master should find due, as aforesaid. From this part of the decree the plaintiff now appealed.

Mr. James Parker, with whom was Mr. Bagshawe, contended—first, that there was no equitable set-off; secondly, that there was no occupation-rent. They sought for a decree that the legacy interest, and costs, should be paid, as the answer admitted sufficient assets. On the first point were cited *Rawson v. Samuel*, 1 Cr. & Phil. 161, 172; Vice-Chancellor Wigram's observations upon that case in *Dodd v. Lydall*, 1 Hare, 337; *Gordon v. Pym*, 3 Hare, 234. Upon the second point a passage was quoted from Co. Litt. p. 199, b., sec. 323, to prove that one of several tenants in common could not have formerly against the others any remedy for mesne profits, nor any action for trespass, but was confined to an ejectment in regard to his moiety. Reference was also made to the statute of 4 Ann. c. 16, s. 27, and *Wheeler v. Horn*, Willes, 208.

Sir F. Simpkison, Mr. Rolt, and Mr. Hislop Clarke in support of the decree contended, that if not strictly an equitable set-off, the amount found by the Master to be due might be deducted from the legacy upon the authority of *Turner v. Morgan*, 8 Ves. 143; *Jeff's v. Wood*, 2 P. Wms. 128; *Runkling v. Barnard*, 5 Mad. 32; *Ex parte O'Ferrall*, 1 Glyn. & Jam. 347, (374?); *Campbell v. Graham*, 1 Russ. & Myl. 453, S. C.; *Campbell v. Sandford*, 8 Bligh. 622; *Burridge v. Rowe*, 1 You. & Col. C. C. 183 & 583; *Cherry v. Boulbee*, 4 Myl. & Cr. 442. As to occupation-rent between tenants in common they referred to 3 & 4 W. 4, c. 27, and the case of *Henderson v. Eason*, decided by the Vice-Chancellor of England, 10 Jur. 821. With respect to the Statute of Limitations in the case of a set-off, they cited *Courtenay v. Williams*, 3 Hare, 539. Two of the plaintiff's letters were also put in, (under

protest from Mr. Parker,) from which it was attempted to show that the plaintiff considered himself liable for the rent in dispute.

The Lord Chancellor, without hearing the completion of Mr. Parker's reply, decided that the Vice-Chancellor's decree could not stand. There was nothing in either of the acts of parliament leading to the conclusion for which the defendants contended. Nothing to show that the occupation of the house was not equally open to the other tenants in common. The plaintiff's impression that he was liable to some rent is not surprising, as it is stated that a branch of this court was under the same impression. There is no evidence of any agreement to pay rent; the answer simply states that the plaintiff occupied the house, and no further answer was put in to the amended bill. Several cases had been cited, but they did not show authority for one tenant in common to charge the other with rent in the absence of any agreement; and it would be a novel doctrine to his lordship if such could have been maintained. The appeal must therefore be allowed.

The disposal of this question obviated the necessity of hearing another appeal in the same cause which the defendants had lodged in respect of certain exceptions to the Master's report.

Mr. J. Parker asked for costs, but the Lord Chancellor would only give them to the hearing of the cause; the subsequent proceedings in the Master's office and the present application were consequent upon an error of the court, in which case it was not the rule to give costs.

Rolls Court.

Brainton v. London and North Western Railway Company. Dec. 7, 1846.

CROSS MOTIONS.—RIGHT TO BEGIN.

A motion to dissolve an injunction should be disposed of before a motion to extend the injunction is heard, although the notice of the latter motion should have been first given.

THIS was a motion to extend an injunction obtained against the London and North Western Railway Company. There was a cross motion to dissolve the injunction.

Mr. Cooper, for the first motion, contended that he had the right to begin, inasmuch as the notice of the motion to extend was prior in time to the notice of the motion to dissolve, but

Lord Langdale held that the motion to dissolve ought to be heard first, inasmuch as the motion to extend would have no *locus standi* if the motion to dissolve should be successful.

Vice-Chancellor of England.

Travers v. Rymer. Dec. 15, 1846.

PRODUCTION OF DOCUMENTS.—AMENDING BILL.

A motion for the production of documents

may be made upon the answer to an original bill, although the bill has subsequently been extensively altered by amendment, and it is not incumbent upon the plaintiff to show that the documents do not relate to part of the bill struck out on such amendments.

THIS was a motion for the production of documents.

Mr. Bethell for the motion.

Mr. J. Parker objected that the motion was made upon the answer to the original bill, and that since that answer was put in, the bill had been amended by striking out the greater part of it, and introducing a variety of statements, so as entirely to alter the case originally made, and he contended that it was incumbent upon the plaintiffs to show that the documents for the production of which he now moved did not relate to the part of his bill which he had struck out.

His Honour, however, held that the onus lay upon the other side, the plaintiff had a right to read the answer to the original bill, and the defendant might, if he pleased, show that the documents, or any of them, did not relate to the case now made by the plaintiff.

Exchequer.

Talbot v. Bulkley. Michaelmas Term, Nov. 25, 1846.

FRIVOLOUS DEMURRER. — SIGNING JUDGMENT.—ISSUE.—TRIAL.

A defendant having demurred to a replication to one of several pleas, a judge ordered the demurrer to be set aside as frivolous, and the plaintiff to be at liberty to sign judgment. The plaintiff entered up judgment accordingly, and proceeded to trial with the other issues. On motion to set aside the judge's order, trial, and subsequent proceedings, Held, first, that as the rule did not ask to set aside the issue, there was no irregularity in the trial. Secondly, that the judgment signed was irregular, and that the plaintiff should have applied to a judge to strike out the plea. Alderson, B., dissentiente.

THIS was an action by drawer against acceptor of a bill of exchange. The defendant pleaded, secondly, "that whilst the plaintiff was the holder of the bill, and before the commencement of the suit, he indorsed and delivered the bill to a person to the defendant unknown, and the defendant then became liable to pay the amount of the bill to the said person, who from the time of the said indorsement had been and still is the holder thereof, and entitled to sue thereon." Replication: that the said person was not, when the action was commenced, the holder of the bill in the declaration mentioned. The plaintiff having added the similiter, and delivered the issue with notice of trial, the defendant, who was under terms of pleading issuably, struck out the similiter to the above replication, and

specially demurred thereto. A summons was taken out to set aside the demurrer as frivolous, when *Platt, B.*, made the following order:—"I do order that the demurrer to the replication to the second plea be set aside as frivolous, and that the plaintiff be at liberty to sign judgment on that plea; that the issue and notice of trial already given do stand, and that the issue and jury process be amended if necessary." The plaintiff then entered into judgment on that plea by *nil dicit*, and went to trial with a special venire to assess the damages. A verdict having been found for the plaintiff, a rule was obtained calling on him to show cause "why the order of *Platt, B.*, should not be rescinded, and why the judgment signed in pursuance thereof, and the trial and assessment of damages, and all subsequent proceedings, should not be set aside."

Humfrey and *Hawkins* showed cause. The demurrer having been set aside as frivolous, the plaintiff was regular in signing judgment as for want of a plea. At all events, there was no irregularity in trying the issues, as the replications concluded to the country, and the defendant was bound to take short notice of trial. Besides the rule does not ask to set aside the issue delivered, but only the trial. While the issue stands there is no ground for setting aside the trial. Where an appearance has been entered by the plaintiff for the defendant, without personal service of the writ and a declaration has been filed, the defendant should move to set aside the appearance and not the declaration. *Brooks v. Roberts*, 3 D. & L. 13.

Bovill, contra. The rule seems to set aside the order of *Platt, B.*, and all subsequent proceedings, and it is drawn up on reading the issue. If the demurrer was not frivolous, the order was wrong. *Frazer v. Welch*, 8 M. & W. 48, is an authority to show that the replication is bad. But though the demurrer was set aside, the plaintiff could not treat the plea as a nullity, and sign judgment as for want of a plea. *Hitchcock v. Walton*, 5 Scott.

Pollock, C. B. The rule must be discharged: it asks to set aside the trial and assessment of damages, but does not seek to set aside the issue upon which that is founded. Those who come to complain of an irregularity should be careful that they themselves are not irregular. It may be that so much of the order as follows the plaintiff to sign judgment is open to objection. *Hitchcock v. Walton* shows that under similar circumstances a general judgment is wrong, and that there ought to be an application to a judge to set aside the particular pleading. The rule will, therefore be discharged without costs.

Parke, B. I am of the same opinion. I do not see how such a judgment could be correctly signed. The case referred to shows that a judgment signed upon the whole record, where the defendant chooses to abandon one of his pleas, is incorrect. In this case, there should have been an application to a

judge to strike out the second plea. With respect to the other point, though the rule is drawn up on reading the issue, it does not ask to set aside the issue, and we ought not to set aside a trial when we see that substantial justice has been done.

Alderson, B. No doubt a frivolous demurrer must be treated as no pleading at all; but then the question is, what judgment is to be signed? The case referred to shows, that under its particular circumstances, it was irregular to sign judgment on the whole record; and the court say that the proper course was to apply to a judge to strike out the other pleas. But inasmuch as in the case of a frivolous demurrer the rule of court enables the judge to give leave to sign judgment as for want of a plea, I do not think that case governs this.

Platt, B. I agree in opinion with my brother *Parke*. Rule discharged without costs.

CHANCERY SITTINGS.

Hilary Term, 1847.

Lord Chancellor.

AT WESTMINSTER.

Monday	Jan. 11	Appeal Motions.
Tuesday	12	{ General Petition-day—Petitions.
Wednesday	13	{ Appeals.
Thursday	14	
Friday	15	
Saturday	16	
Monday	18	
Tuesday	19	
Wednesday	20	
Thursday	21	Appeal Motions.
Friday	22	{ (Petition-day) Petitions, (unopposed only) and Appeals.
Saturday	23	{ Appeals.
Monday	25	
Tuesday	26	
Wednesday	27	
Thursday	28	Appeal Motions.
Friday	29	{ (Petition-day) Petitions, (unopposed only) and Appeals.
Saturday	30	Appeals.
Monday	Feb. 1	Appeal Motions & Appeals.

Master of the Rolls.

Hilary Term, 1847.

AT WESTMINSTER.

Monday	Jan. 11	Motions.
Tuesday	12	{ Petitions in the General Paper.
Wednesday	13	{ Pleas, Demurrers, Causes, Fur. Directions and Exceptions.
Thursday	14	
Friday	15	
Saturday	16	
Monday	18	
Tuesday	19	
Wednesday	20	
Thursday	21	Motions.
Friday	22	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	23	
Monday	25	
Tuesday	26	
Wednesday	27	

Thursday	28	Motions.
Friday	29	
Saturday	30	{ Petitions in the General Paper.
Monday	Feb. 1	Motions.

Short Causes, Consent Causes, and Consent Petitions every Saturday at the sitting of the court.

Notice.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor of England.

Monday	Jan. 11	Motions.
Tuesday	12	{ General Petition-day.—Petitions.
Wednesday	13	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday	14	
Friday	15	{ Short Causes, Unopposed Petitions and Causes.
Saturday	16	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	18	
Tuesday	19	
Wednesday	20	
Thursday	21	Motions.
Friday	22	{ Petition-day (unopposed first,) Short Causes, and Causes.
Saturday	23	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Monday	25	
Tuesday	26	
Wednesday	27	
Thursday	28	Motions.
Friday	29	{ Petition-day (unopposed first), Short Causes and Causes.
Saturday	30	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	Feb. 1	Motions.

Vice-Chancellor Knight Bruce.

Monday	Jan. 11	Motions and Causes.
Tuesday	12	{ (General Petition-day.) Petitions and Causes.
Wednesday	13	Bankrupt Petitions.
Thursday	14	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	15	
Saturday	16	Short Causes and Ditto.
Monday	18	{ Pleas, Demurrers, Exceptions, Causes and Further Directions.
Tuesday	19	
Wednesday	20	Bankrupt Petitions and Ditto.
Thursday	21	Motions & Causes.
Friday	22	{ (Petition-day) Petitions and Causes.
Saturday	23	Short Causes and Causes.
Monday	25	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday	26	
Wednesday	27	Bankrupt Petitions and Ditto.
Thursday	28	Motions and Causes.
Friday	29	{ (Petition-day) Petitions and Causes.
Saturday	30	Short Causes and Causes.
Monday	Feb. 1	Motions and Causes.

Vice-Chancellor's List:

Monday	Jan. 11	Motions and Causes.
Tuesday	12	Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Wednesday	13	
Thursday	14	
Friday	15	
Saturday	16	Short Causes, Cause Petitions, (unopposed first,) and Causes.
Monday	18	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	19	
Wednesday	20	
Thursday	21	Motions and Ditto.
Friday	22	Pleas, Demurrers, Exceptions, Further Directions, and Causes.
Saturday	23	Short Causes, Cause Petitions, (unopposed first,) and Causes.
Monday	25	Pleas, Demurrers, Exceptions, Causes, and Fur. dirs.
Tuesday	26	
Wednesday	27	
Thursday	28	Motions and Ditto.
Friday	29	Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Saturday	30	Short Causes, Cause Petitions, (unopposed first,) and Causes.
Monday	Feb. 1	Motions and Causes.

CHANCERY CAUSE LIST.

Master of the Rolls.

Hilary Term, 1847.

(JUDGMENTS reserved.)

Stand over, Hicks v. Lord Alvanley, plea.
Otley v. Gray, cause.

PLEAS AND DEMURRERS.

Stand over, Dean of Ely v. Gayford, six pleas.
Puredes v. Lazard, plea.
Welham v. Welham, objection for want of parties.
Same v. Same ditto.
Suffield v. Bond, exons.

CAUSES.

Third cause day, Easter Term, Walton v. Potter.
Do. A. J. B. Hope v. Hope.
Do. A. J. Hope v. Same.
Do. H. J. Hope v. Same.

S. O. to file suppl. bill, Hele v. Bexley, Same v. Same, exons.

Part heard, 3rd cause day, Easter Term, Hodgkinson v. Cooper, and exons.

Part heard, 3rd cause day, Easter Term, Churchman v. Capon, fur. dirs. and costs.

Third cause day, Easter Term, Hargrave v. Hargrave, fur. dirs. and costs.

Part heard, 3rd cause day, Augarand v. Parry.
Lord Nelson v. Lord Bridport, fur. dirs. and costs.
Barnes v. Hastings.

Third cause day, Clark v. Chuck.

Do. Bagshaw v. Parker.
Do. Same v. Same.

Hamilton v. Samler, Samler v. Hamilton.

Howard v. Howard.

Attorney-General v. Magdalen College, Oxford.

Feistel v. King's College.

Allfree v. Allfree.

Same v. Same.

Part heard, Willis v. Douglas.

Baker v. Gibson, Same v. Pearson, fur. dirs. and costs.

Oasely v. Anstruther, exons. 3 sets, and fur. dirs. and costs.

Hubbard v. Young, Drewry v. Davies, Same v. Drewry, fur. dirs. and costs and petition.

Stratford v. Ratson, fur. dirs. and costs.

S. O. short, Woods v. Wood, with petition.

To present petition, Stourton v. Jerningham.

Kendall v. Granger, Same v. Same, Same v. Carthew, fur. dirs. and costs.

Thompson v. Clive.

Pole v. Wakeman.

Hills v. Nash.

Elderton v. Lock.

Attorney-General v. Churchill.

William v. Griffiths.

Counsel v. Ward, Perring v. Same.

Pooley v. Majoribanks, Same v. Walbrook.

Madeley v. Harborne.

Richardson v. Hastings.

Wheatley v. Wheatley.

Kilner v. Leech, Same v. Day, fur. dirs. and costs.

Turner v. Hudson, Same v. Same, Same v. Scott, Same v. Greatwick, fur. dirs. and costs.

Gardler v. Gardler, fur. dirs. and costs.

Pattison v. Hawkesworth.

Cossens v. Green.

Pleatow v. Cornbloom.

Kerr v. Gillespie.

Fryer v. Andrews.

Coles v. Forest, Same v. Same, Ward v. Same.

Fortnum v. Shackel.

Davis v. Roberts, Roberts v. Davis.

Syms v. Lee, Corageo v. Same, Same v. Vink.

Judson v. Hawkins.

Howard v. Prince, Same v. Stapelton.

Wood v. Swann.

Humble v. Fenwick.

Wiggins v. Pappin, Same v. Clarke, Same v. Pappin, Same v. Marriot, fur. dirs. and costs.

Carlile v. Morrice, Same v. Same, exons. and fur. dirs. and costs.

Bowden v. Avery.

Attorney-Gen. v. East Retford, Same v. Mould,

Same v. Parker, fur. dirs. and costs and petition.

Trotter v. Walmsley.

Attorney-Gen. v. Wright, fur. dirs. and costs.

Same v. Same, suppl. bill.

Attorney-Gen. v. Corporation of Leicester, fur. dirs. and costs.

Kirton v. Lyne, fur. dirs. and costs.

Brown v. Selby.

Attorney-Gen. v. Gibbs, fur. dirs. and costs.

Gordon v. Abdy. ditto.

Mason v. Upton.

Baker v. Bayden, Same v. Addey.

Webb v. Earl Shaftesbury, Earl Shaftesbury v.

Arrowsmith, Same v. Ponsonby, Ponsonby v. Same.

Same v. Graham, Same v. Ponsonby, Same v. Same.

Same v. Lord Kinnaid, Same v. Same, Same v. Bn.

de Mauley, fur. dirs. and costs.

Coombes v. Stewart.

Attorney-General v. Day, Same v. Johnson, fur. dirs. and costs.

Lord Mostyn v. Spencer, Same v. Same, exons.

Attorney-General v. Curtis.

Barton v. Mills, fur. dirs. and costs.

Peters v. Peters.

McFarlane v. McFarlane, Same v. Weshart, fur.

dirs. and costs.

Lane v. Hardwicke, Same v. Goodyear, fur. dirs. and costs.

Skipper v. King.

Lee v. Lockhart, Wild v. Same, Lee v. Hardy, Wild v. Same, Same v. Dawson, Same v. Longton, Same v. Thexton, fur. dirs. and costs.

NEW CAUSES.

Fearenside v. Fearne, Same v. Kyraston. Latour v. Majoribanks, Same v. Latour. Balgrave v. Balgrave, Same v. Same. Watson v. Davis, Same v. Chester. Thorp v. Harvey. Dowding v. Bartley, Same v. Same, Same v. Same, Fussell v. Same, Same v. Dowding, Same v. Bartley, Same v. Dowding, fur. dirs. and costs. Lubbock v. Chapman, Same v. Lubbock, fur. dirs. and costs. Wilkinson v. Charlesworth, fur. dirs. and costs. Smith v. Earl Effingham, Same v. Same, fur. dirs. and costs, suppl. suit. Pares v. Miles, fur. dirs. and costs. Jennings v. Mules, fur. dirs. and costs. Short, Norris v. Faint, Tween v. Same.

COMMON LAW CAUSE LISTS.

Queen's Bench.

NEW TRIALS.

Undetermined at the end of the Sittings after Michaelmas Term, 1846.

Michaelmas Term, 1845.

Durham.—Hinde v. Ruine and another—Serjeant Murphy.
Devon.—Mayor, &c. of Exeter v. Harvey and another—Rogers.
Devon.—Damerell v. Protheroe and others—Serjeant Kinglake.
Devon.—Schank v. Sweetland—Cockburn.
Cornwall.—Marshall, Esq. v. Hicks—M. Smith.
Somerset.—Doe d. Earl of Egremont and another v. Williams and another—Crowder.
Bristol.—Addison v. Gibson—Butt.
Hilary Term, 1846.
Middlesex.—Hunter v. Caldwell—Knowles.
Middlesex.—Doe d. Tebbutt and others v. Brent and others—Humfrey.
London.—Whyte and another v. Buraby—Butt.
London.—Bond and another v. Nurse and another—Knowles.
London.—Turner v. Ambler—M. D. Hill.
London.—The Queen v. F. Kensington—Whitehurst.
Middlesex.—Lovelock v. Franklyn—Petersdorff.

Easter Term, 1846.

Middlesex.—Pemberton v. Vaughan—Pearson.
Middlesex.—Thompson v. Pettitt and another—Martin.
Middlesex.—Vincent v. Dore, executrix, &c.—Petersdorff.
London.—Curtis v. Pugh—Martin.
London.—De Freis v. Littlewood and another—Serjeant Shee.
London.—Tucker v. Clarkson—Same.
London.—The Queen v. Benjamin Parker—Same.
Kent.—Doe d. Jacobs v. Phillips—Gurney.
Sussex.—Standon v. Christmas—Bovill.
Sussex.—Kine v. Evershed—Chambers.
Survey.—Pemberton, v. Colls, D. D.—Serjeant Shee.
Survey.—Samuel v. Green—Lush.
Durham.—Hills and another v. Memard and others—Knowles.
York.—Mountain v. Groves and another—Baines.
York.—Worth and another v. Gresham and another—Dundas.

Liverpool.—Doe d. Haywood v. Tinslay—Crompton.

Chester.—Johnson v. Oldfield—Chilton.
Chester.—Davis v. Falk—Same.
Chester.—Doe d. Groves v. Groves—Welsby.
Glamorgan.—Doe d. Richards and another v. Evans—Chilton.
Glamorgan.—Doe d. Bennett v. Harvey and another—E. V. Williams.
Carmarthen.—Thomas, Esq. v. Frederick, Esq.—Chilton.
Carmarthen.—Same v. Same—E. V. Williams.
Lincoln.—Chapman v. Rawson—Whitehurst.
Stafford.—Whitmore and others, assignees, &c. v. Leak—Serjeant Talfourd.
Hereford.—Evans v. Horniatt—Huddleston.
Gloucester.—Garbett and others v. Adams and others—Serjeant Talfourd.
Gloucester.—Doe d. Dyke v. Dyke.—Serjeant Allen.
Somerset.—Parnell v. Smith and others.—Butt.
Devon.—Woolmer and others v. Toby the younger—Serjeant Kinglake.

Trinity Term, 1846.

Middlesex.—Beale v. Moulds & others—Humfrey.
London.—Nicholls v. Atherstone—W. H. Watson.
London.—The Queen v. Slesinger.—Sir F. Thesiger.

Michaelmas Term, 1846.

Middlesex.—Gurney, the elder v. Gurney and another—Sir F. Thesiger.
Middlesex.—Collett v. Curling—W. H. Watson.
London.—Boyd v. Royal Exchange Assurance Company—Serjeant Shee.
London.—Herring v. Meteyard—W. H. Watson.
London.—Simpson v. Margitson and others—Same.
Montgomery.—Middleton v. Bedward and another—Welsby.
Carmarthen.—Davies, a pauper, v. Williams—Townshend.
Chester.—Joynson v. Garfitt—Welsby.
Notts.—Pott and another v. Flather—Wildman.
Leicester.—Hassell v. Heming—Humfrey.
York.—Lockwood v. Wood—W. H. Watson.
Liverpool.—McEwin v. Wood, the younger, and others—Knowles.
Liverpool.—Hobson and others, assignees, &c. v. Garner.—Same.
Kent.—Nunn v. Jackson—Serjeant Channell.
Essex.—Constable v. Martin.—Same.
Surrey.—Carruthers v. West.—Charnock.
Norwich.—Burton v. Scott—O'Malley.
Norwich.—Linford v. Fitzroy—Same.
Carmarthen.—Bowen v. Owen and another—W. H. Watson.
Devon.—Harrison v. Bankart—Crowder.
Cornwall.—Stevens v. Jeacocke—Cockburn.
Wills.—Robins v. Fennell and others—Crowder.
Somerset.—The Queen v. Chorley—Serjeant Kinglake.

Tried during Michaelmas Term, 1846.

Middlesex.—Greville v. Stultz and others, in error—Barstow.

SPECIAL CASES AND DEMURRERS.

Hilary Term, 1847.

Dry.—Sc adding v. Lorant, special case.
Wiglesworth and Co.—Dale v. Pollard and others, ditto; to stand over till judgment given in Gosling v. Veley.
Yallop.—Sharpe v. Black, clk., dem.

Norcutt.—Newton v. Boodle, sued with others, dem.
 Norcutt.—Newton v. Rowe and Norman, sued with another, dem.
 Parkes.—Cobb v. Allan and another, special case.
 Close.—Hutt & Morrell, dem.
 J. Williams.—Williams, assignee, &c. v. Chambers, dem.
 Roche and Co.—Blagg v. Gibson and another, dem.
 Andrewes.—Andrewes v. The Right Hon. Baron Lyndhurst, dem.
 Bebb and Co.—Nicoll v. Orgill, dem.
 Weymouth.—Doe dem. Reunon and another v. Ashley, special case.
 Sudlow and Co.—Doe d. Hawksworth v. Hawksworth, special case.
 Hughes and Co.—Berkley v. Kemp, dem.
 Hughes and Co.—Same v. Mackey, dem.
 Townshend.—Munden v. Duke of Brunswick, dem.
 Vardy.—Doughty v. Bowman and another, dem.
 Stephens and H.—Latham and another v. Simmonds and another, dem.
 Whitmore and Co.—Morris, Rt., v. Duke of Beaufort, dem.
 Webber.—Watling and another, executors, &c. v. Horwood, special case.
 Gregory and Co.—Ewbank v. Wood, dem.
 Bush and M.—Bush v. Weiss, dem.
 Beddome and Co.—Spence and another v. Chodwick, dem.
 Skilbeck and H.—Goddard v. Wray, dem.
 Bower and Son.—Ferryhough v. Cursham, dem.
 Fyson and Co.—Clayton v. Hozier, dem.
 Fildes.—Bradley v. Barr, dem.
 Dean and Son.—Minshall the elder v. Roberts, dem.
 Williamson and H.—Robson v. Oliver and another, dem.
 Alger.—Doe d. Harris and others v. Taylor, special case.
 Walker and Co.—Doe d. Biddulph and others v. Poole, special case.
 Meredith and Co.—Adams, executor, &c. v. Mayor, &c. of Ludlow, dem.
 Yallop.—Bownes v. Marsh, N. O. V.
 Richards and W.—Wood v. Mytton, Arrest of Judgment.
 Fletcher and K.—Barker v. Jervis, dem.
 Hughes and Co.—Berkeley v. De Veau, sued, &c. dem.
 Stuart.—Colston v. Adams, dem.
 Sandon.—Churchwardens, &c., of St. Nicholas, Deptford, v. Sketchley, special case.
 Maples and Co.—Harrison v. Gales, dem.
 Roy and Co.—Hall v. Riviere, dem.
 Ravenscroft.—Parker v. Gill, dem.
 Raw.—Wilmot v. Batson, dem.
 Everest and Co.—King v. Marman and others, dem.
 Philp.—Runciman v. Standbrough, dem.
 Maddox and Co.—Desvignes v. Burbidge, dem.
 Kempster.—Hall v. Edmonds, dem.
 Parkes.—Ellis and others, assignees, &c., v. Russell and others, special verdict.
 Morphet.—Plumer v. Robertson, dem.

Common Pleas.

Remnant Paper of Hilary Term, 1847.

Enlarged Rules.

To 5th day.—Newton and ux. v. Boodle and others; in the matter of Sir George Stephen, Knight Ricketts and others v. Bowlny Executrix and others; Same v. Same.

To 6th day.—Matthews v. Leapuigwell, clerk.

New Trials of Trinity Term last.

Middlesex.—Lane v. Dixon.

New Trials of Michaelmas Term last.

Middlesex.—Pater v. Baker; Cameron v. Winch; Parsons v. Sexton and another; Wontner v. Sharp; Parratt v. Blunt; Elderton & Emmons, Secretary; Shaw and others v. Clarkson.

London.—Brown v. De Winton; Hartley v. Cummings & another; Hartley & another v. Cummings; Baker and another v. Plaskett; Phillips and another v. Navine and another; Von Melle v. Higgs; Mollett v. Wackerbath and others; Angle v. Gilpin; Maxey v. Thomas.

Berks.—Pryce v. Belcher.

Essex.—Daines v. Heath.

Kent.—Barker v. Stead.

Surrey.—Dawson and others v. Morrison; Stead v. Anderson; Collins v. Newstead; King v. Norman; Couling v. Cox.

Liverpool.—Tuckey, executor v. Hawkins; Winch and others v. Hamilton and another.

Newcastle.—Lambert and another v. Knell.

Devon.—Young v. Grove.

Cornwall.—Ricketts and others v. Bennett and another; Doe Lord v. Crag; Coode v. Cayzer.

Derby.—Cox, surviving, &c. v. Glue; Same v. Saint; Same v. Mousley; Batho and another v. Butthyany.

Warwick.—Valpy and others, assignees, &c. v. Sanders and another; Turniciff v. Tedd.

CUR. AD VULT.

Patteson and others v. Holland and others.

To stand over till the *sci. fa.* in Queen's Bench is disposed of.

Roberts v. Gruneison.

Rich v. Basterfield.

Doe (Harrison) v. Hampson.

Nias v. Davies, Esq.

Boyson and another v. Gibson and others.

Doe (Phillips) v. Rollings.

Brown and others v. Mallett.

Ireland v. Thomson.

Clark v. Smith.

Demurrers, Hilary Term, 1847.

January 11th to Thursday 14th, Motions in arrest of judgment.

Whitling v. Des Anges and another.

Jenkinson and another v. Raphael.

Dixon the younger v. Clark and another.

Clarke v. Allatt.

Ablett v. Clarke.

West v. Nibbs, (sued, &c.)

Scott and another v. Berkeley.

Chadwick v. Herepath.

Francis v. Dodsworth.

Richardson v. Tubbs, Esq.

Crompte v. Hunter.

Webb v. Hurrell.

Cundell and another v. Dawson.

Joll and another v. Viscount Curzon.

Hollier v. Laurie and another, (sued, &c.)

Battershell and others v. Bishop of Winchester.

Ring and others v. Newman.

January 15th to 20th, Special arguments.

Fearn v. Cochrane.

Capel and others v. Jones.

Hunt v. Shaw.

January 21st to 30th, Special arguments.

THE EDITOR'S LETTER BOX.

THE letters of "A Special Pleader;" "Vindex," and others, are unavoidably deferred.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

—————
SATURDAY, JANUARY 16, 1847.
—————

—————"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

PROPOSED LAW REFORMS.

OPERATION OF THE LAST INSOLVENT ACT.

As it appears from the Lord Chancellor's Secretary of Bankrupts' letter, addressed to the Secretary of the Society for Amending the Law of Bankruptcy and Insolvency, which appeared in our last number,* that the Lord Chancellor has a separate bill for amending the Law relating to Insolvents, it may be hoped that his lordship will not overlook the manifest and manifold defects of the law as it is now administered, and especially those created by the last act, the 7 & 8 Vict. c. 96. This mischievous and ill-considered measure, whilst it inflicted "a heavy blow and sore discouragement" to many thousands of honest tradesmen, and held out a premium to the knavish and unprincipled, has proved at the same time "a mockery, a delusion, and a snare," to the unfortunate persons who were induced, under false pretences, to avail themselves of its provisions. It was never hinted or suggested, during the progress of the bill through parliament—and, in sooth, we believe, was never imagined or dreamt of by those who framed and carried it—that its protective operation was to be more restricted, or the *whitewashing* process under it less effectual, than it had proved under the Insolvent Acts previously in force. The whole scope and tenour of the measure was professedly, to give new privileges and increased facilities to those who needed this description of relief. The passing of the act was to be a commence-

ment of the millennium of insolvent debtors. All who were weary of the importunities of creditors, and heavy laden with pecuniary liabilities, were affectionately besought to come under the provisions of this act to the Commissioners of Bankrupts, who would give them rest. A noble philanthropist—The Magnus Apollo of law reformers—considerately wrote round to the prisons, instructing the inmates how they might concoct their own schedules—with their own hands work out their liberty, unassisted by the superfluous and obtrusive aid and advice of either barrister or attorney! No doubt the suggestion was sincere and well-meant; but like much more that has emanated from the same prolific source, it produced nothing but mortification and disappointment to those who were credulous enough to act upon it. We should be glad to find some member of parliament moving early in the session for a return of the number of insolvent petitions filed in the Court of Bankruptcy, under the 7 & 8 Vict. c. 96, and dismissed by the commissioners in town and country for some defect in form, wholly irrespective of the merits of the application. We believe it would be found that a far greater number of petitions were unsuccessful under this act by reason of technical defects, than under all the statutes previously in force taken together. For some months after the act came into operation, our original reports furnished numerous instances of this description, which were published, as much for the purpose of warning, as of instructing those who undertook professionally the onerous, and generally inadequately-requited duty of guiding insolvent petitioners in their applications to

* Ante, p. 230.

the Court of Bankruptcy. There lies before us a case^b where three different petitions filed by one individual at distant intervals were severally dismissed upon preliminary objections purely of a technical nature. If this petitioner was an honest man, and there is no reason to presume the contrary, he must have been in indigent circumstances before he applied to the court, and that he should have had three times to incur the expenses of framing and filing his petition and schedule, and of giving notice to his creditors of the time appointed for the consideration of his petition—as well as of journeying from a remote part of Hampshire, was a cruel aggravation of the miseries of his situation, even if his perseverance had been rewarded with success, instead of terminating in disappointment. No doubt, in this case, as in many others of a similar nature, the commissioner unwillingly gave effect to the provisions of the act of parliament, but the legislature had not thought fit to invest him with any discretion. The act peremptorily directs,^c that if the petition and affidavit verifying it “shall not be in the form prescribed, such petition shall be dismissed;” and the form prescribed is so vague, and withal so complicated, that it requires no inconsiderable diligence, and an extensive and accurate knowledge of the petitioner’s circumstances, to fill up the blanks so that he may safely and conscientiously verify it. Those whose petitions have been dismissed, however, are not the only parties who complain of the operation of the recent act. Many petitioners who have obtained their final orders, find that the relief secured under such orders is of too limited a character to entitle those who concocted the measure to any claims on their gratitude. One of our correspondents some time since^d directed attention to a case decided in the Court of Common Pleas,^e in which it was holden that a final order granted under the 7 & 8 Vict. c. 96, is no answer to an action brought for the recovery of a debt mentioned in the insolvent’s schedule, and that the insolvent’s after-acquired property might be taken in execution, upon a judgment obtained in such an action. In the case referred to the defendant, in answer to an action of debt, pleaded his final order, granted by

one of the Commissioners of Bankruptcy on petition; but the court held that nothing was to be found in the statute extending its operation beyond the protection of the debtor’s person from arrest or detention. It was observed that the previous statute 5 & 6 Vict. c. 116, specified that an order made under that act might be pleaded in bar, but the more recent act contained no such provision, and it was possible the legislature intended that, whilst the insolvent’s person was protected, his after-acquired property should be liable for his debts. An insolvent who has taken the benefit of the act 7 & 8 Vict. c. 96, rather than of the 5 & 6 Vict. c. 116, or of the 1 & 2 Vict. c. 110, as administered by the Court for the Relief of Insolvent Debtors, is still at the mercy of any of the creditors named in the schedule in respect to after-acquired property. It is desirable that this state of the law should be amended without delay, for the effect will be to give an additional stimulus to litigation, and induce creditors who have not already obtained judgments to take steps in anticipation of those who are less vigilant, in order to possess themselves of the after-acquired property of their debtors who have taken the benefit of this act. Such a result is obviously in contravention of the principles of the Law of Insolvency, as well as Bankruptcy, which has for its leading object the equal distribution of the insolvent’s effects amongst all his creditors; and the hardship which it may inflict on the debtor is only equalled by the unfairness of its operation on the whole body of those to whom he is indebted.

CONSTRUCTION OF STATUTES.

WHAT IS AN ACT OF “A LOCAL AND PERSONAL NATURE” UNDER THE 5 & 6 VICT. c. 97?

THE act 5 & 6 Vict. c. 97,^a which was brought into parliament when the present Lord Chief Baron held the office of Attorney-General, amongst other things, contains a sweeping provision,^f repealing all clauses and provisions in any act or acts “commonly called public, local, and personal, or of a local and personal nature,” giving power to plead the general issue only, and to give any special matter in evidence under it.

^b *In re Shelter*, Leg. Obs. v. 31, p. 274.

^c Section 3. ^d Ante, p. 149.

^e *Tomer v. Gingel*, reported 15 Law, Jour. 255, C. P.

The legislature had thought fit to confer this peculiar privilege, or protection, of pleading the general issue, and giving any special defence in evidence under it, upon great numbers of persons acting, or who might have supposed themselves to be acting, in a *quasi* public capacity; and the object of the repealing clause to which we have adverted appears to be, to reduce persons acting under the authority, or supposed authority, of acts of parliament not really of a public nature, to the level of all others of her Majesty's subjects, by obliging them to plead specially any defence which, under ordinary circumstances, is not admissible under the plea of "the general issue." The terms in which the repealing clause is framed has produced great difficulty in determining under what acts the exemption is still preserved, and in what cases it is taken away. It is quite clear that the only cases in which the privilege is taken away are those in which it has been conferred by some act "commonly called public, local, and personal, or of a local and personal nature;" but the difficulty arises in defining what acts are to be considered as falling within this description.

The first case in which the question appears to have been brought under judicial consideration was in the case of *Cock v. Gent*,⁶ where the question was, whether an act for establishing a Court of Requests at Sandwich and its vicinity, was a public, local, and personal act within the 5 & 6 Vict. c. 97, s. 3. The late Chief Justice *Tindal*, before whom the cause was tried on circuit, thought the Sandwich Court of Requests Act was not within the enactment, but the Court of Exchequer were of a different opinion, the late Lord Abinger observing, that he could not conceive anything which could more precisely meet the description of a local and personal act, than a Court of Requests Act.

The same point was again raised, and very fully discussed, in the Court of Exchequer, in a case lately reported.⁷ In this case the question arose in respect of proceedings under the Building Act, (14 Geo. 3, c. 78,⁸) which by sec. 100, enacts,

that "the defendant may plead the general issue, and give the act and the special matter in evidence at any trial to be had thereupon." The state of facts on which the court was called upon to decide was as follows:—

In an action of trespass for an injury done to the plaintiff's wall, the defendant pleaded "not guilty," putting the words "by statute" in the margin of the plea. The defence relied upon was, that the acts complained of were done in pursuance of the Building Act, (14 Geo. 3, c. 78,) and that under the 100th sec. of that statute, the venue ought to have been laid in Middlesex, whilst it was in fact laid in Surrey. The answer to the alleged defence was, that the right of pleading the general issue, and giving the special matter in evidence was taken away by the stat. 5 & 6 Vict. c. 97, s. 3; and that the defence, that the venue was not laid in Middlesex, was only available under a special plea. On the part of the defendant, it was argued, that the 14 Geo. 3, c. 78, could not be considered a local and personal act, inasmuch as it was printed and classed by authority of parliament amongst the public acts; and that the nature of the acts meant to be affected by the 5 & 6 Vict. c. 97, must be taken with respect to their *parliamentary* meaning. On the other hand, it was contended, that the circumstance of an act being printed amongst the public acts does not alter its nature, or make it a general act; and it was remarked, that an act for lighting Grosvenor Square, and another for enabling some persons to dispose of certain houses in London, by way of lottery, were printed amongst the public acts. The court, in pronouncing its judgment, took occasion to observe, that the act 14 Geo. 3, c. 78, was not an act commonly called public, local, and personal, for that designation did not take place till long after the statute passed.⁹ It was singular that

⁶ 12 Mees. & W. 234.

⁷ *Richards v. Basto*, 15 M. & W. 224.

⁸ In the course of the argument the court intimated a clear opinion that the New Building Act, 7 & 8 Vict. c. 84, was not retrospective in its operation, and did not apply to actions previously commenced.

⁹ In the course of the judgment in this case, *Parke, B.*, adverted to the circumstances under which acts of parliament came to be classed as at present in the statute book, and stated, that "on the 1st May 1797, the House of Lords resolved, that the King's printer should class the general statutes and special, the public local and private, in separate volumes; and on the 8th May, 1801, there was a resolution of the House of Commons, agreed to by the House of Lords, "that the general statutes, and the public local and personal in each session should be classed in separate volumes." This was the commencement of the present parliamentary arrangement of the statutes.

the new Building Act had not been classed amongst the public, local, and personal acts, "as it was clearly of a local and personal nature: local, as being confined to local limits; personal, as affecting particular descriptions of persons only, as distinguished from all the Queen's subjects." The former act, 14 Geo. 3, c. 78, was of the same general character, and was clearly of a local and personal nature, excepting that some of the clauses, as the 84th and 86th, relating to accidental fires, were of a public nature. If the defence arose out of those clauses, it would probably be held, that the statutable defence was not taken away; but where the defence arose as in this case, under a part of the act which was of a local and personal nature, the barons all agreed, that the statutable plea of the general issue, whereby to give the special matter in evidence was taken away by the stat. 5 & 6 Vict. c. 97. As to the second point, the court thought the defence that the venue was not properly laid, would have been available under the statutable plea of not guilty, but the right of giving evidence of the special matter under that plea having been taken away, the defendant was bound to plead such matter specially in order to avail himself of the defence. Upon these grounds, the court gave judgment for the plaintiff.

ORDER OF THE MASTER OF THE ROLLS APPOINTING EXAMINERS.

8th January, 1847.

WHEREAS, by an order made by the Right Honourable the Master of the Rolls, on the Thirteenth day of January, one thousand eight hundred and forty-four, it was, amongst other things, ordered,

That every person who had not previously been admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them, should, before he be admitted to take the oath required by the statute 6 & 7 Vict. c. 73, to be taken by persons applying to act as solicitors of the High Court of Chancery, undergo an examination touching his fitness and capacity to act as a solicitor of the said Court of Chancery; and that twelve solicitors of the same court, to be appointed by the Master of the Rolls in each year, be examiners for the purpose of examining and inquiring touching the fitness and capacity of every such applicant for admission as a solicitor; and that any five of the said examiners shall be competent to conduct the examination of such applicant.

Now, in furtherance of the said order, the Right Honourable the Master of the Rolls is

hereby pleased to order and appoint, that Samuel Amory, Benjamin Austen, Michael Clayton, William Loxham Farrer, Richard Harrison, Bryan Holme, Germain Lavie, Robert Wheatley Lumley, Charles Ranken, Charles Shadwell, William Tooke, and Edward Archer Wilde, solicitors, be examiners until the thirty-first December, one thousand eight hundred and forty-seven, to examine every person (not having been previously admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them,) who shall apply to be admitted a solicitor of the said Court of Chancery, touching his fitness and capacity to act as a solicitor of the said court. And the Master of the Rolls doth direct that the said examiners shall conduct the examination of every such applicant, as aforesaid, in the manner and to the extent pointed out by the said order of the thirteenth day of January, one thousand eight hundred and forty-four, and the regulations approved by his lordship in reference thereto, and in no other manner and to no further extent.

LANGDALE, M. R.

NEW RULE IN THE COURT OF EXCHEQUER.

SPECIAL PAPERS.

ORDERED, 1. That there be two special papers, one to contain all the *demurrers* set down for argument, and the other all the *special cases* and *special verdicts*.

2. That each of these papers shall be called on for hearing upon alternate paper days, provided, however, that if either be exhausted the other will then be called on.

3. That there be three paper days, viz.:—Monday, Wednesday, and Friday, in each week, excluding, as heretofore, the first four and last four days of each term.

4. That this rule shall begin to be enforced in next Easter term.

ANECDOTES OF LAWYERS.

THE LATE MR. DUVAL.

MR. DUVAL was consulted in a case of great magnitude, and advised a bill in chancery, claiming a very considerable fund; the suit was in the first instance unsuccessful. The party again consulted Mr. Duval, who reiterated his former opinion, and at once advised an appeal to the Lord Chancellor.

The appeal was successful, and the client waited upon him to state the result, and with great delicacy offered him a cheque for 2,000 guineas as an acknowledgment for his valuable advice, urging it upon his acceptance, but Mr. D. was inexorable, and peremptorily declared that all his fees had been paid and he would not accept another shilling. It is said he died worth several hundred thousand pounds.

SMALL DEBT COURTS.

PROPOSED CIRCUITS.

The following list, extracted from Mr. Bethune's letter to the Lord Chancellor, (see p. 226, *ante*), contains the names of the counties where Courts of Request now exist,—the acts under which such courts are held,—the places where they are held—and the substituted courts.

Counties,	Acts under which existing Courts of Request are held.	Where held.	Substituted Courts.
Cambridgeshire	18 Geo. 3, c. 36	{ Ely Wisbeach Whittlesea March and Chatteris	{ Ely Wisbeach Peterborough March
Cheshire	3 & 4 W. 4, c. 119 6 W. 4, c. 13 46 Geo. 3, c. 114	{ Hyde Macclesfield Stockport Launceston Holsworthy Stratton, or Camelford	{ Hyde Macclesfield Stockport Launceston Holsworthy
Cornwall	4 & 5 Vict. c. 76	{ Belper Chesterfield	{ Belper Chesterfield ^a
Derbyshire	2 & 3 Vict. c. 98 2 & 3 Vict. c. 104 2 & 3 Vict. c. 103 6 Geo. 3, c. 20 2 & 3 Vict. c. 88 2 & 3 Vict. c. 102	{ Dronfield Eckington Derby Glossop Ashbourne Bakewell Alfreton Wirksworth	{ Derby Glossop Ashbourne Bakewell Abolished ^b
Devonshire	8 & 9 Vict. c. 79 13 Geo. 3, c. 27 4 & 5 Vict. c. 73 3 Vict. c. 25 7 Will. 4, c. 62 3 Vict. c. 68 4 & 5 Vict. c. 80	{ Crediton Exeter Exeter Newton Abbott Plymouth, Devonport, or East Stonehouse Tavistock Totness Dartmouth	{ Crediton Exeter ^c Newton Abbott Plymouth Tavistock Totness
Gloucestershire	56 Geo. 2, c. 76 7 W. 4, and 1 Vict. c. 84 32 Geo. 3, c. 77 1 Will. & Mary, c. 18 5 & 6 Vict. c. 83	{ Bristol Bristol Cirencester Gloucester Coleford Little Dean	{ Bristol ^d Cirencester Stow Stroud Gloucester Speech-house Forest of Dean
Hampshire	46 Geo. 3, c. 66	{ Newport Saint Alban's Watford	{ Newport Saint Alban's Watford
Hertfordshire	25 Geo. 2, c. 38	{ Watford	{ Watford
Kent	6 & 7 Will. 4, c. 120 1 & 2 Vict. c. 89 25 Geo. 2, c. 45 48 Geo. 3, c. 50 26 Geo. 3, c. 18 47 Geo. 3, c. 35 24 G. 3, c. 8 25 Geo. 3, c. 7 26 Geo. 3, c. 98 47 Geo. 3, Ses. 2, c. 40 47 Geo. 3, Ses. 2, c. 7 47 Geo. 3, c. 35 48 Geo. 3, c. 51 48 Geo. 3, c. 98 4 & 5 Vict. c. 67 3 Vict. c. 18	{ Greenwich Canterbury Seven Oaks Tonbridge Deal Sandwich Dover Faversham Whitstable Folkstone Gravesend Dartford Margate Ramsgate Rochester Ashton Blackburn Bolton	{ Greenwich Canterbury Seven Oaks Tonbridge Deal ^f Dover Faversham Whitstable Hythe Gravesend Dartford Ramsgate ^g Rochester Ashton Blackburn Bolton
Lancashire			

Counties.	Acts under which existing Courts of Request are held.	Where held.	Substituted Courts.
Lancashire . . .	4 & 5 Vict. c. 83 . . .	{ Burnley	Burnley
		{ Clitheroe	Clitheroe
		{ Colne	Colne
	2 & 3 Vict. c. 101 . . .	{ Bury	Bury
	6 & 7 W. 4, c. 135 . . .	{ Liverpool	Liverpool
	48 Geo. 3, c. 43 . . .	{ Manchester or Salford	Manchester
		{ Kirkham	Kirkham
	10 Geo. 3, c. 21 . . .	{ Poulton	Fleetwood
	2 & 3 Vict. c. 100 . . .	{ Oldham	Oldham
	2 & 3 Vict. c. 90 . . .	{ Rochdale	Rochdale
	4 & 5 Vict. c. 82 . . .	{ Prescott, or St. Helen's	Prescot
	2 & 3 Vict. c. 91 . . .	{ Warrington	Warrington
		{ Wigan	Wigan
	4 & 5 Vict. c. 78 . . .	{ Chorley	Chorley
		{ Ormskirk	Ormskirk
Leicestershire . . .	1 Vict. c. 15	{ Ashby	Ashby
	7 Will. 4, c. 8	{ Hinckley	Hinckley
		{ Market Bosworth	Market Bosworth
	6 & 7 W. 4, c. 123 . . .	{ Leicester	Leicester
	7 Will. 4, c. 7	{ Leicester	Leicester
	7 Will. 4, c. 9	{ Loughborough	Loughborough
		{ Alford	
		{ Burgh-le-Marsh	
		{ Spilsby	Spilsby ^h
		{ Wainfleet	
Lincolnshire . . .	47 Geo. 3, Ses. 2, c. 78 . . .	{ Caistor	Caistor
		{ Horncastle	Horncastle
		{ Louth	Louth
		{ Saltfleet	
		{ Market Rasen	Market Rasen
		{ Barton	Barton
		{ Sibsey	Abolished ¹
	47 Geo. 3, Sess. 2, c. 1 . . .	{ Boston	Boston
	47 Geo. 3, c. 37	{ Holbeach	Holbeach
		{ Spalding	Spalding
	46 Geo. 3, c. 37	{ Great Grimsby	Great Grimsby
	4 & 5 Vict. c. 86	{ Gainsborough	Gainsborough
	2 & 3 Vict. c. 89	{ Grantham	Grantham
	18 Geo. 3, c. 34	{ Hagnaby	Abolished ¹
	24 Geo. 2, c. 16	{ Lincoln	Lincoln
	4 & 5 Vict. c. 85	{ Folkingham	Sleaford ^k
		{ New Sleaford	
	19 Geo. 3, c. 43	{ Wragby	Abolished ¹
Middlesex	23 Geo. 2, c. 33	{ Kingsgate Street	The district selected by the County Clerk of Middlesex ^m
		{ Brentford	
		{ Uxbridge	
		{ Enfield	
	2 Will. 4, c. 65	{ Whitechapel	{ Hackney } ⁿ
Norfolk	24 Geo. 2, c. 62	{ Westminister	Stepney
	10 Geo. 3, c. 20	{ Lynn	Westminster
	31 Geo. 2, c. 24	{ Yarmouth	Lynn
Northumberland . . .	1 Will. and Mary, c. 17 . . .	{ Yarmouth	Yarmouth
		{ Newcastle	Newcastle
Nottingham	4 & 5 Vict. c. 87	{ East Retford	East Retford ^o
		{ Tuxford	
		{ Worksop	Abolished
		{ Bawtry	
	4 & 5 Vict. c. 79	{ Newark	
	2 & 3 Vict. c. 105	{ Nottingham	Newark
Rutlandshire	1 Vict. c. 36	{ Oakham	Nottingham
		{ Uppingham	Oakham
Shropshire	22 Geo. 3, c. 37	{ Broseley	Uppingham
	23 Geo. 3, c. 73	{ Shrewsbury	Madeley
Somersetshire	45 Geo. 3, c. 67	{ Bath	Shrewsbury
		{ Bath	Bath
Staffordshire	4 & 5 Vict. c. 81	{ Stoke	Hanley ^p
		{ Hanley	

Counties.	Acts under which existing Courts of Request are held.	Where held.	Substituted Courts
Staffordshire . . .	48 Geo. 3, c. 110 . . .	{ Bilton . . . Wednesbury . . . Willenhall . . . Wolverhampton . . .	{ Wolverhampton ^a
Suffolk	47 Geo. 3, Sess. 2, c. 79	Ipswich	Ipswich
Surrey	46 Geo. 3, c. 88 . . . 4 Geo. 4, c. 123 . . .	Wandsworth . . . Southwark . . .	Wandsworth Southwark
Sussex	3 Vict. c. 10	Brighton	Brighton
Warwickshire . . .	47 Geo. 3, c. 14 . . .	Birmingham . . .	Birmingham
Westmoreland . . .	4 Geo. 3, c. 41 . . .	Kendal	Kendal
Wiltshire	47 G. 3, S. 2, S. 2, c. 39	{ Bradford Melksham Trowbridge	{ Trowbridge ^r
	5 Geo. 3, c. 9	{ Calne Chippenham Corsham	{ Chippenham ^s
		{ Amesbury Fordingbridge Christchurch	{ Abolished ^t Christchurch
	4 & 5 Vict. c. 84 . . .	{ Lymington Ringwood Salisbury	{ Lymington Ringwood Salisbury
		{ Wimborne Minster Westbury Warminster	{ Wimborne Minster Westbury Warminster
Worcestershire . . .	48 Geo. 3, c. 88 . . . 47 Geo. 3, c. 36 . . . 17 Geo. 3, c. 19 . . . 12 Geo. 3, c. 66 . . .	{ Oldbury Stourbridge Kidderminster	{ West Bromwich Stourbridge Kidderminster
	4 & 5 Vict. c. 25 . . .	{ Bromsgrove Northfield Redditch	{ Bromsgrove
		{ Kingsnorton Aberford Selford	{ Abolished ^u Boston Selby
Yorkshire	2 & 3 Vict. c. 86 . . . 3 Vict. c. 33	{ Otley Howden Barnsley	{ Abolished ^v
	1 & 2 Vict. c. 90 . . . 46 Geo. 3, c. 135 . . . 4 Geo. 3, c. 40 . . .	{ Beverley Doncaster Batley	{ Beverley Doncaster Bradford ^w
	2 & 3 Vict. c. 106 . . .	{ Bradford Keighley Halifax	{ Otley Keighley Halifax
		{ Huddersfield Crowle Epworth	{ Huddersfield Thorne ^x
	4 & 5 Vict. c. 74 . . .	{ Hatfield Hull	{ Hull
	48 Geo. 3, c. 109 . . .	{ Hull	{ Hull
	2 & 3 Vict. c. 85 . . .	{ Leeds Birstal Pontefract	{ Leeds Dewsbury Wakefield Pontefract
		{ Bradford Goole Huddersfield Saddleworth Selby	{ Abolished ^y
	2 & 3 Vict. c. 87 . . . 48 Geo. 3, c. 106 . . . 48 Geo. 3, c. 103 . . .	{ Rotherham Sheffield Ecclelland	{ Rotherham Sheffield Abolished ^z

The following are Mr. Bethune's "notes" or remarks with regard to the existing courts and those proposed to be substituted for them.

^a The courts held at Chesterfield, Dronfield, and Eckington were established by acts passed in the same session, and have the same jurisdiction in debt to 15*l*. There is but one clerk for both courts. The population of the

district now within the jurisdiction of the Dronfield and Eckington courts is nearly half the whole population assigned to Chesterfield, to which district these towns are now annexed. It seems to me, therefore, that although Chesterfield is fixed upon as the most convenient place for holding the court, the equitable claim of the clerk of the Dronfield and Eckington courts to appointment, under the act, for the united district, should not be wholly disregarded in favour of the clerk of the Chesterfield court. This object can be attained by substituting the court at Chesterfield for the three Courts of Request, the effect of which will be to make the clerks of these several courts joint clerks of the county court of Derbyshire, held at Chesterfield for the united district. There is an apparent inconvenience in having joint clerks not both resident in the same town, yet this may probably be obviated in practice by the unlimited discretion given to the judge for making arrangements as to the division of duties and emoluments between these officers in case of difference between them. The joint appointment, in this point of view, is to be considered only as the means of securing that the vested rights of both are duly considered.

^b Alfreton and Wirksworth are now included in the district of the court at Belper. The clerk for Alfreton and Wirksworth is also the clerk of the courts at Ashbourne and Bakewell, which courts will be continued.

^c There are two courts of request at Exeter; one having jurisdiction to 40s., the other to 15s. This is a case somewhat like that of Bristol, which is provided for specially by 9 & 10 Vict. c. 95, s. 35. The proposed consolidation will effect a like arrangement at Exeter.

This consolidation is contemplated by 9 & 10 Vict. c. 95, sec. 35.

^e The court now held at Cirencester has jurisdiction over the district known as the Seven Hundreds of Cirencester, which include both Stow and Stroud. The greatest part of the business of the court probably comes from the neighbourhood of Stroud. Under these circumstances, it seems to me that the clerk of the Cirencester court has an equitable claim to be appointed in each of these districts.

^f Under 47 Geo. 4., c. 35, two separate courts are constituted, one at Sandwich, the other at Ramsgate: the former is now included in the district of the Deal Court, and Margate is now included in the district of the latter. The most equitable arrangement, therefore, appears to be by consolidating the court at Ramsgate with that held at Margate, under 47 Geo. 3, sess. 2, c. 7, and the court at Sandwich with the court at Deal, under 26 Geo. 3, c. 18.

^g The court now held at Folkestone is an *one*, having jurisdiction only to 40s. It does not include Hythe in its district, but the court now proposed to be established at Hythe includes Folkestone, which seems to give to the clerk of the Folkestone court a claim to this appointment.

^h Courts are held at a great number of places in the soles of Bolingbroke and Horncastle, under 47 Geo. 3, sess. 2, c. 78. I have collected them in such groups as appear to be best represented by the towns in which courts are to be held. Alford, Burgh, Wainfleet, and Spilsby are four towns, all situated in the Spilsby district, and there is but one clerk for the last three towns. The courts at Horncastle and Tattershall, Louth and Saltfleet, are consolidated on the same principle.

ⁱ Sibsey is a small town in the Boston district, and cannot be conjoined with any other in which a court is held under the same act. There is therefore no alternative, but to recommend that this court be abolished, which will entitle the officers of it to claim compensation under 9 & 10 Vict. c. 94, sec. 38. The clerk is the same person who is clerk of the Spilsby court.

^j Hagnaby is a small parish of only 85 persons, which, very unaccountably, was left under the jurisdiction of 18 Geo. 3, c. 34, when that act, which formerly applied to the whole soke of Bolingbroke and wapentake of Candle-shoe, was repealed as to the remainder by Geo. 3, sess. 2, c. 78.

^k These courts are consolidated on the same principle as the courts mentioned in note a.

^l The wapentake of Wraggöe was left under the jurisdiction of 19 Geo. 3, c. 43, when that act, which formerly applied to the whole soke of Horncastle, was repealed by 47 Geo. 3, sess. 2, c. 78. The population of the wapentake, in 1841, was 3,959, in an area of rather more than 51 square miles. It is now included partly in the district of the Lincoln Court, partly in that of Horncastle.

^m The act 9 & 10 Vict. c. 95, s. 12, gives to the county clerk of Middlesex the choice of districts among those which shall be constituted within the limits of jurisdiction of 23 Geo. 2, c. 33.

ⁿ The district of the Tower Hamlets, for which a court is now held at Whitechapel, is proposed to be divided into two, which have been called the Hackney and the Stepney Court, by which names, it may be as well to remark, it is not intended to imply that the court-houses should necessarily be in the parishes of the same name. There are now two clerks of the Tower Hamlets Court of Requests, and, by substituting the two Courts of Hackney and Stepney for it, they will both become joint clerks of both; but this arrangement cannot be carried out effectually, unless they shall agree on the division of the duties and emoluments of these two offices, or in case of disagreement between them, unless the two judges of these courts shall concur in making the same order respecting them. If this cannot be secured, the only alternative is to substitute one of these courts, as, for instance, the Stepney Court, for the court now held at Whitechapel, under 2 W. 4, c. 65.

^o Only one clerk is appointed under 4 & 5 Vict. c. 87, in East Retford, Tuxford, and Worksop. He is also clerk of a court at

Bawtry, which is now included in the Doncaster district, and that court of requests is therefore proposed to be abolished.

* There is only one clerk for the courts at Stoke and Hanley.

* These courts are proposed to be consolidated on the same principle as the different courts mentioned in note (a). The act apparently authorises the appointment of two clerks—one for Wolverhampton, the other for Bilston, Wednesbury, and Willenhall.

* The courts at Melksham and Trowbridge are proposed to be consolidated on the same principle as the courts mentioned in note (a).

* There is but one clerk for the courts held at these three towns.

* Only one clerk is appointed under 4 & 5 Vict. c. 84. It is therefore immaterial whether the courts at Amesbury and Fordingbridge be abolished or consolidated with those of the other towns in which county courts are to be holden.

* Only one clerk is appointed under 4 & 5 Vict. c. 75. Kingsnorton is now included in the Birmingham district, and the court of requests held under this act must therefore be abolished.

* There is but one clerk for all the courts held under the Barkston Ash and Skyrack Court of Requests Act. Boston, near Thorpe Arch, most nearly represents the Aberford district. Otley is now included in the Bradford circuit, and Howden in the Hull circuit; the courts of request held there under this act must therefore be abolished.

* There is at present great confusion arising out of the concurrent jurisdiction of several courts in the West Riding of Yorkshire. The court at Batley is no longer to be held, and part of the district now annexed to it is to be annexed to the Leeds circuit. Part of the Bradford district is proposed to be annexed to Otley; and it appears to me that the most equitable arrangement is to make the clerks of the Bradford and Batley court joint clerks of the Bradford and Otley courts, the court now held at Otley, under 3 Vict. c. 33, being abolished as mentioned in note (y).

* Only one clerk is appointed under 4 & 5 Vict. c. 84.

* Bradford and Huddersfield are now annexed to the Bradford and Halifax circuits, Saddleworth to the South-East Lancashire circuit, and Goole and Selby to the York circuit; and the court held there under the act 2 & 3 Vict. c. 85, must therefore be abolished. As all these towns are now within the jurisdiction of the court of the Honour of Pontefract, for the whole of which only one clerk is appointed, I think he has an equitable claim to be appointed clerk to all the courts within the Leeds circuit, which is in fact substituted for the Honour.

* The circumstances of the Sheffield and Eccleshall courts are referred to in the particulars of the Sheffield circuit; there can be no doubt that the most advantageous arrangement will be the abolition of the Eccleshall court, which will allow of the consolidation of that district with that of the Sheffield court. The steward of the Eccleshall court will be entitled to compensation, and the deputy stewards of the two courts may be appointed joint clerks of the united district, in the terms of 9 & 10 Vict. c. 93, s. 11.

The following are the proposed METROPOLITAN COURTS in *Middlesex, Surrey, and Kent* :—

The annexed particulars will show approximately how it is proposed to divide the metropolis; but it will probably be more convenient in most of these cases, to describe the boundaries by the lines of well-known streets, rather than by following the parochial boundaries, which, in some parts of the town, are very intricate and inconvenient. I have assigned separate districts to Greenwich and Brentford, in which it is certain that separate courts ought to be held, and also to Brompton and Marylebone; but I have not subdivided any of the other districts, although it is probable that in Hackney and Stepney the court ought to be held in two places. Provisions may be afterwards made for more than one courthouse, if it shall appear that more than one is absolutely necessary for the convenience of the district.

Title of Court.	Superintendent Registrar's Districts attached to each Court.*	Population.
40. <i>Kensington.</i>		
* <i>Brentford</i>	Brentford. The sub-districts of Staines, in Staines, consisting of the parishes of Staines, Bedfont, Stanwell, Harlington, Harmondsworth and Cranford	44,559
* <i>Brompton</i>	Chelsea.	
* <i>Marylebone</i>	Kensington, except the parish of Paddington. The sub-districts of St. Mary, Christchurch, and St. John in Marylebone, being that part of the parish of Marylebone which lies north of the New Road and west of Portman Street, the west side of Portman Square, Gloucester Street, and Gloucester Place, the parishes of Paddington and Willesden and precinct of Twyford Abbey	89,779 97,385
41. <i>Bloomsbury</i>	St. Giles's and St. George, Bloomsbury. St. Pancras, except the sub-district of Gray's Inn Lane.—(See Clerkenwell).	231,723

Title of Court.	Superintendent Registrar's Districts attached to each Court.	Population.
	The sub-districts of rectory, Cavendish Square, and All Souls in Marylebone, being all of the parish that is not in the district of the Marylebone Court.—(See Marylebone).	240,605
42. Westminster	Westminster. St. James's, Westminster, St. Martin-in-the-Fields, Strand, St. George, Hanover Square	229,547
43. Clerkenwell	Clerkenwell, Holborn, Islington, St. Luke. Sub-district of Gray's Inn Lane, in St Pancras, being that part of the parish which is bounded on the north by the New Road, on the west by a line in front of the houses on the east side of Burton Crescent, and on all other sides by the boundary of the parish. The parish of Hornsey. The chapelry of Highgate	231,501
44. Hackney	Bethnal Green, Hackney, Shoreditch. The sub-districts of Artillery and Spitalfields, consisting of the parish of Christ Church, Spitalfields, the liberty of Norton Folgate, and the Old Artillery Ground. The sub-district of Walthamstow in West Ham, consisting of the parishes of Walthamstow and St. Mary Woodford	228,905
45. Stepney	St. George's in the East, Poplar, Stepney. Whitechapel, except the sub-districts of Artillery and Spitalfields.—(See Hackney). West Ham, except the sub-districts of Walthamstow.—(See Hackney)	232,784
46. Southwark	Rotherhithe, Bermondsey, Newington St. George, Southwark, St. Olave, St. Saviour The two sub-districts of St. John's Waterloo, in Lambeth, being that part of the parish of Lambeth which is bounded by the River Thames, the parishes of St. Saviour and St. George, Southwark, and a line drawn from Westminster bridge along Bridge Street, and Westminster Bridge Road to the boundary of the parish of St. George, Southwark	231,585
47. Blackheath & Brixton.		
• Greenwich	Greenwich, Lewisham	98,697
• Lambeth	Camberwell. Lambeth, except the two sub-districts of St. John's Waterloo.—(See Southwark)	125,664
		<u>224,361</u>

Total, metropolitan courts 1,851,111

* The superintendent registrar's districts, in most cases, are conterminous with the poor-law unions of the same name. Where only part of a district is annexed to any town, the parishes or townships, &c., which are taken, or excepted, are specified separately.

The population is here taken from the account printed 2nd October, 1841, (52); it differs slightly from the more correct return afterwards given in the census. The latter, being arranged in hundreds and parishes, could not be used for the present purpose.

The following is the list of intended COURT TOWNS, arranged in counties: the figures prefixed to each town show the circuit in which it is included:—

Bedfordshire.	37 Buckingham
36 Ampthill	39 Chesham
36 Bedford	39 Great Marlow
36 Biggleswade	37 Newport Pagnell
36 Leighton Buzzard	Cambridgeshire.
36 Luton	36 Cambridge
Berkshire.	32 Ely
38 Abingdon	32 March
38 Farringdon	36 Newmarket
54 Hungerford	32 Wisbeach
38 Newbury	Cheshire.
38 Reading	8 Altrincham
38 Wallingford	7 Birkenhead
38 Wantage	7 Chester
39 Windsor	7 Congleton
Buckinghamshire.	8 Hyde
37 Aylesbury	8 Knutsford

8 Macclesfield	3 Whitehaven
7 Nantwich	3 Wigton
7 Northwich	Derbyshire.
7 Runcorn	20 Ashborne
8 Stockport.	20 Bakewell
Cornwall.	20 Belper
60 Bodmin	20 Chapel - en - le .
60 Falmouth	Frith
60 Helston	20 Chesterfield
59 Launceston	20 Derby
60 Liskeard	8 Glossop
60 Penzance	Devonshire.
60 Redruth	58 Axminster
60 St. Austell	58 Barnstaple
60 St. Columb Major	58 Crediton
60 Truro	58 Exeter
Cumberland.	59 Holsworthy
3 Alston	59 Honiton
3 Carlisle	59 Kingsbridge
3 Cockermouth	59 Newton Abbott
3 Keswick	59 Oakhampton
3 Penrith	59 Plymouth

58 South Molton	52 Southampton	24 Hinckley	37 Oundle
59 Tavistock	52 Winchester	18 Leicester	32 Peterborough
58 Tiverton	<i>Herefordshire</i>	18 Loughborough	37 Towcester
58 Torrington	25 Bromyard	24 Lutterworth	37 Wellingboro'
59 Totness	26 Hereford	18 Market Bosworth	<i>Northumberland.]</i>
<i>Dorsetshire.</i>	25 Ledbury	18 Market Harbo-	1 Alnwick
53 Blandford	26 Leominster	rough	1 Belford
53 Bridport	26 Ross	18 Melton Mowbray	1 Bellingham
53 Dorchester	26 Wexhly	<i>Lincolnshire.</i>	1 Berwick
53 Shaftesbury	<i>Hertfordshire</i>	16 Barton-on-Hum-	1 Haltwhistle
53 Wareham	39 Barnet	ber	1 Hexham
53 Weymouth	35 Bishop-Stortford	17 Boston	1 Morpeth
53 Wimborne Min-	39 Hertford	32 Bourne	1 Newcastle
ster	36 Hitchin	17 Brigg	1 North Shields
<i>Durham.</i>	36 Royston	17 Caistor	1 Rothbury
2 Barnard Castle	39 St. Alban's	17 Gainsborough	1 Wooler
2 Bishop's Auck-	39 Watford	18 Grantham	<i>Nottinghamshire.]</i>
land	<i>Huntingdonshire.</i>	17 Great Grimsby	19 Bingham
2 Darlington	32 Huntingdon	32 Holbeach	19 East Retford
2 Durham	32 St. Neots	17 Horncastle	19 Mansfield
2 Hartlepool	<i>Kent.</i>	17 Lincoln	19 Newark
2 Shotley Bridge	50 Ashford	17 Louth	19 Nottingham
2 South Shields	49 Bromley	17 Market Rasen	<i>Oxfordshire</i>
2 Stockton	50 Cranbury	17 Sleaford	37 Banbury
2 Sunderland	50 Cranbrook	32 Spalding	38 Bicester
2 Wolsingham	49 Dartford	17 Spilsby	38 Chipping Norton
<i>Essex</i>	50 Deal	18 Stamford	38 Oxford
35 Braintree	50 Dover	<i>Middlesex.</i>	38 Thame
35 Brentwood	50 Faversham	41 Bloomsbury	38 Witney
35 Chelmsford	49 Gravesend	40 Brentford	38 Woodstock
35 Colchester	47 Greenwich	40 Brompton	<i>Rutlandshire.</i>
35 Dunmow	50 Hythe	43 Clerkenwell	18 Oakham
35 Halstead	49 Maidstone	39 Edmonton	18 Uppingham
35 Harwich	50 Ramsgate	44 Ilackney	<i>Shropshire</i>
35 Maldon	49 Rochester	40 Marylebone	27 Bishop's Castle
35 Rochford	50 Romney	45 Stepney	27 Bridgnorth
35 Romford	49 Sevenoaks	39 Uxbridge	27 Cleobury
36 Safron Walden	50 Sittingbourne	42 Westminster	27 Drayton
39 Waltham	49 Tonbridge	<i>Monmouthshire.</i>	27 Ludlow
<i>Gloucestershire.</i>	<i>Lancashire.</i>	26 Abergavenny	27 Madeley
56 Bristol	10 Ashton	26 Chepstow	27 Newport
55 Cheltenham	4 Blackburn	26 Monmouth	27 Oswestry
56 ChippingSodbury	5 Bolton	26 Newport	27 Shrewsbury
55 Cirencester	4 Burnley	26 Pontypool	27 Wom
55 Gloucester	10 Bury	33 Tredegar	27 Wellington
55 Newent	5 Chorley	26 Usk	27 Whitchurch
55 Northleach	4 Clitheroe	<i>Norfolk.</i>	<i>Somersetshire.</i>
26 Speech House in	4 Colne.	33 Attleborough	54 Bath
the Forest of	4 Fleetwood	33 Aylsham	57 Bridgewater
Dean	4 Garstang	32 DownhamMarket	57 Chard
55 Stow	5 Haslingden	33 East Dereham	54 Frome
55 Stroud	4 Kirkham	34 Harleston	57 Somerton
55 Tewkesbury	4 Lancaster	33 Holt	57 Taunton
56 Thornbury	7 Leigh	33 Little Walsing-	57 Wellington
55 Winchcomb	6 Liverpool	ham	57 Wells
<i>Hampshire.</i>	9 Manchester	32 Lynn	57 Weston - super -
52 Andover	10 Oldham	33 North Walsing-	Mare
52 Alton	5 Ormskirk	ham	57 Williton
52 Basingstoke	7 Prescot	33 Norwich	57 Wincanton
52 Bishop's Waltham	4 Preston	32 Swaffham	57 Yeovil
53 Christchurch	10 Rochdale	34 Thetford	<i>Staffordshire.</i>
53 Fordingbridge	8 Salford	33 Wymondham	20 Burton-on-Trent
53 Lynton	3 Ulverstone	33 Yarmouth	21 Cheadle
52 Newport (Isle of	7 Warrington	<i>Northamptonshire</i>	21 Hanley
Wight)	5 Wigan	37 Brackley	21 Leek
52 Petersfield	<i>Leicestershire.</i>	37 Daventry	21 Lichfield
52 Portsmouth	18 Ashby - de - la -	37 Kettering	21 Newcastle-under-
52 Romsey	Zouch	37 Northampton	Lyme

21 Rugeley	24 Rugby	15 Richmond	11 Keighley
21 Stafford	23 Solihull	16 Scarborough	15 Knaresborough
21 Stone	24 Southam	15 Stokesley	14 Leeds
21 Uttoxeter	24 Stratford	15 Thirsk	11 Otley
22 Walsall	24 Tamworth	15 Whitby	14 Pontefract
22 West Bromwich	24 Warwick	15 York	15 Ripon
22 Wolverhampton	<i>Westmoreland.</i>	<i>Yorkshire, West Riding.</i>	13 Rotherham
<i>Suffolk.</i>	3 Ambleside	13 Barnsley	10 Saddleworth
34 Beccles	3 Appleby	15 Boston	15 Selby
34 Bury St. Edmund's	3 Kendal	11 Bradford	11 Settle
34 Eye	3 Kirkby Lonsdale	14 Dewsbury	13 Sheffield
34 Framlingham	<i>Wiltshire.</i>	13 Doncaster	11 Skipton
34 Hadleigh	54 Bradford	13 Goole	13 Thorne
34 Halesworth	54 Chippenham	12 Halifax	12 Todmorden
36 Haverhill	54 Devizes	12 Holmfirth	14 Wakefield
34 Ipswich	55 Malmesbury	12 Huddersfield	
34 Lowestoft	54 Marlborough		
36 Mildenhall	53 Salisbury		
34 Stowmarket	54 Swindon		
35 Sudbury	54 Trowbridge		
34 Woodbridge	54 Warminster		
<i>Surrey.</i>	54 Westbury		
48 Chertsey	<i>Worcestershire.</i>		
48 Croydon	25 Bromsgrove	<i>Anglesey.</i>	29 Wrexham
48 Dorking	25 Droitwich	28 Llangefni	<i>Flintshire.</i>
48 Epsom	22 Dudley	<i>Brecknockshire.</i>	28 Holywell
48 Farnham	25 Evesham	30 Brecknock	28 Mold
48 Guildford	25 Kidderminster	30 Builth	<i>Glamorganshire.</i>
48 Kingston	25 Pershore	30 Hay	30 Bridgend
47 Lambeth	25 Shipston	<i>Caermarthenshire.</i>	30 Cardiff
48 Reigate	25 Stourbridge	31 Caermarthen	30 Merthyr
47 Southwark	25 Tenbury	31 Llandeilo-fawr	30 Neath
48 Wandsworth	25 Upton	31 Llandovery	30 Swansea
<i>Sussex.</i>	25 Worcester	31 Llanelly	<i>Merionethshire.</i>
51 Arundel	<i>Yorkshire, East Riding.</i>	31 Newcastle - in -	29 Bala
51 Brighton	16 Beverley	Emlyn	29 Corwen
51 Chichester	16 Bridlington	<i>Cuernavarsshire.</i>	29 Dolgelly
51 Cuckfield	16 Great Driffield	28 Bangor	<i>Montgomeryshire.</i>
51 East Grimstead	16 Hedon	28 Caernarvon	29 Llanfyll
51 Hastings	16 Howden	28 Conway	29 Llanidll
51 Horsham	16 Hull	28 Portmadoc	29 Machynlleth
51 Lewes	16 Pocklington	28 Pwllheli	29 Newtown
51 Petworth	<i>Yorkshire, North Riding</i>	<i>Cardiganshire.</i>	29 Welchpool
<i>Warwickshire.</i>	15 Fasingwold	31 Aberayron	<i>Pembrokeshire.</i>
24 Alcester	16 Helmsley	29 Aberystwith	31 Haverfordwest
24 Atherstone	15 Leyburn	31 Lampeter.	31 Narberth
23 Birmingham	16 New Malton	<i>Denbighshire.</i>	31 Pembroke
24 Coventry	15 Northallerton	28 Denbigh	<i>Radnorshire.</i>
		28 Llanrwst	29 Presteign
		29 Ruabon	30 Rhaiadr
		28 Ruthwin	

The following are the proposed COURT Towns in

WALES.

<i>Anglesey.</i>	29 Wrexham
28 Llangefni	<i>Flintshire.</i>
<i>Brecknockshire.</i>	28 Holywell
30 Brecknock	28 Mold
30 Builth	<i>Glamorganshire.</i>
30 Hay	30 Bridgend
<i>Caermarthenshire.</i>	30 Cardiff
31 Caermarthen	30 Merthyr
31 Llandeilo-fawr	30 Neath
31 Llandovery	30 Swansea
31 Llanelly	<i>Merionethshire.</i>
31 Newcastle - in -	29 Bala
Emlyn	29 Corwen
<i>Cuernavarsshire.</i>	29 Dolgelly
28 Bangor	<i>Montgomeryshire.</i>
28 Caernarvon	29 Llanfyll
28 Conway	29 Llanidll
28 Portmadoc	29 Machynlleth
28 Pwllheli	29 Newtown
<i>Cardiganshire.</i>	29 Welchpool
31 Aberayron	<i>Pembrokeshire.</i>
29 Aberystwith	31 Haverfordwest
31 Lampeter.	31 Narberth
<i>Denbighshire.</i>	31 Pembroke
28 Denbigh	<i>Radnorshire.</i>
28 Llanrwst	29 Presteign
29 Ruabon	30 Rhaiadr
28 Ruthwin	

APPLICATIONS FOR TAKING OUT AND RENEWAL OF CERTIFICATES.

On the last Day of Hilary Term, 1847.

Queen's Bench.

Ashford, Daniel Henry, Shepton Mallett	Dawson, Roger, Liverpool; St. Asaph
Bowden, James, 26, Park Village, East	Farmer, James Bayley, Wellington
Broughton, Robert John Porcher, Melcombe	Gibbs, Griffith, Bath; Chudleigh; and
Place	Exeter
Bissill, Charles Edward, Sleaford	Heyes, James, Prescott
Burbury, Daniel Winter, Leek Wootton	Hall, William Robert, Hungerford
Colegrave, William, 15, Dorset Place, Dorset	Hopkins, John, Llandovery
Square; Warwick Square, Kensington	Hutchinson, Thomas, Hartlepool
Capes, Thomas Hawksley, Reedness, near	Johnson, John Fortin, 4, Walcot Square,
Goole	Lambeth
Cavell, Edmund, Saxmundham	Jordan, William, Risdon Hall, West Teign-
Cutten, Charles Edward, Harrow	mouth
	Kightley, William, 5, Leicester Pl., Leicester
	Square; Bridgewater Street; Ossulton Street
	Lightfoot, Rook Tiffin, Wigton
	Leach, Francis, 26, Russell Square
	Law, James Charles, Oxford; Abingdon;
	Thorverton, near Collympton
	Mingaye, W. Robert, 43, Upper Charlotte

Street, Fitzroy Square; Wilby; and King's Lynn

Owen, Arthur Watkin, Llanrwst; Maesmynan

Pope, Benjamin David, Cleobury, Mortimer Pinkney, Thomas Francis, 41, Chiswell St., Finsbury Square

Pownall, Edward, Ipswich; Lower Brook Street

Roberts, William Henry, Great Yarmouth; Brixton; and Charlotte Street

Roberts, Thomas, Market Deeping; Greatford

Ratcliffe, Robert, Oldham; New Mills, Glossop.

Sweetland, Edward Maddox, 77, George St. Portman Square

Smythe, Clement Taylor, Maidstone Smedley, John Benjamin, 4, Harpur Street

Udall, Thomas, Newcastle-under-Lyne West, Charles John, Norwich; Maddox Street, Great Pulteney Street.

Williams, Henry, Lindfield, near Cuckfield

Chancery.

Smith, Charles, 36, Great James Street, Bedford Row, 5 and 3, Verulam Buildings, Gray's Inn

NOTICES OF APPLICATION TO JUDGE AT CHAMBERS FOR TAKING OUT AND RENEWAL OF CERTIFICATES.

On the 2nd day of February, 1847, in Vacation after Hilary Term.

Queen's Bench.

Beckham, Charles, Curry, Reading Bell, Edward, Stafford

Cæsar, William, Cronton, Prescott Chippendale, Augustus, 188 n., Sloane St. Chelsea

Crane, John William Howard, 11, Soley Terrace, Pentonville

Cooper, George Halcott, East Dereham Eminson, Richard, Grantham

Fuller, Horatio, admitted by the name of Horatio Nelson Fuller, Ipswich

Fluker, James, 4, Gainford Place, Barnsbury Road

Greenwell, Walpole Eyre, 26, Allsop Terrace Gibbon, Lewis Plevy, Narbeth

Goodeve, Joseph, 14 John Street; Grenville Street

Hunt, R., 82, Bunhill Row; 28, Gt. Leonard Street; 67, Paul Street, Finsbury

Hood, J. Kemp Jacob, 120, Jermyn Street, St. James's; Edgbaston

Jauncey, George Mundy, Billiter Square Knowles, Charles James, Shrewsbury

Milner, Christian Splidt, 47, Upper Seymour Street

Myers, John, Manchester Noy, Edward Hampton, Horsham

Owen, John, Hereford Parsons, G., 35, Tavistock Place; 19, Sylvan Grove; Manchester Buildings

Piggot, Horatio, Ulting, near Maldon

Philbrick, George Edward, 2, Red Lion Square

Robson, Richard Cheesman, 17, Margaret Street, Cavendish Square

Sutcliffe, William, Hebden Bridge Stanley, Harold, 3, Bedford Row; Stanhope Cottage, Regent's Park

Styan, Harry Smith, 34, Brunswick Square; Harpur Street

Wilcocks, J., 10, Bury Street, Bloomsbury; 10, Cooper Street, City Road

Ward, Granville Leveson Gower, Durham; Brighton

Welsh, John Hare, 1, Mary Place, Bow Lane, Poplar

Williams, Charles, Bruges, in the kingdom of Belgium.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

EVIDENCE.

DEATH.

See *Presumption of death*.

DEED.

See *Memorial*.

EXHIBIT.

If the plaintiff has not replied to the answer, he cannot prove an exhibit at the hearing of the cause. *Jones v. Griffith*, 14 Sim. 262.

FINE.

The entry of the payment of the king's silver is sufficient evidence of a fine having been duly levied, the fine being complete on payment. *Majoribanks v. Hovenden*, 8 Ir. Eq. Rep. 319.

MEMORIAL OF DEED.

An issue was directed to try whether *R. C.* was a lunatic at the time of the execution of certain instruments. At the trial, a memorial of a deed executed by *R. C.* was produced, as evidence of the acts of *R. C.* The deed itself was not produced, nor the non-production accounted for: *Held*, on a motion for a new trial, that the memorial was properly received in evidence. *Creagh v. Blood*, 8 Ir. Eq. Rep. 434.

PRESUMPTION OF DEATH.

1. A person ought not to be presumed to be dead from the fact of his not having been heard of for seven years, if the other circumstances of the case render it probable that he would not be heard of though alive.

The old law relating to the presumption of death is daily becoming more and more untenable, in consequence of the increased facility of travelling. *Watson v. England*, 14 Sim. 23.

2. *A.* went abroad in September 1830. His father died in September 1833. About twenty months previous to that time, *A.* was heard of for the last time.

The court ordered a share of the father's

residue bequeathed to *A.* to be transferred to his brother, as the sole next of kin of the father living at the father's death, on the brother giving security to refund it in case *A.* should be living or should have died after his father. *Dowley v. Winfield*, 14 Sim. 277.

PROMISSORY NOTE.

Presentment.—Where a promissory note was made payable at a certain time after sight, with interest thereon, and the interest was duly paid for several years, (as the bill alleged,) the court held, that the note must be taken to have been acted upon according to its form and tenor; and therefore, that the presentment for sight must have been duly made before the interest was paid; and that the payment became due upon the note at the prescribed date after such presentment; and that the Statute of Limitations would begin to run from the time the payment so became due. *Way v. Bassett*, 5 Hare, 55.

PRIVILEGED COMMUNICATIONS.

Solicitor.—The privilege of communications between solicitor and client extends to all matters within the scope of the ordinary duties of a solicitor, and the sale of estates being one of such matters, it was held that a solicitor was not at liberty to disclose what had passed in conversations which he had either with the client or the agent of the client, relative to the amount of the bidding reserved upon the sale of an estate in which he had been concerned for him, or to other matters connected with such sale.

But, *semble*, if the agent had been examined, he would have been bound to answer.

If a question raised by the demurrer of a witness to the interrogatories, be one which the court can dispose of in that shape, it is bound to do so, and not to reserve the objection to the hearing. *Carpmael v. Powis*, 1 Phill. 687.

Case cited in the judgment: *Walker v. Wildmann*, 6 Madd. 47.

2. **Solicitor and Client.**—The general rule is, that a defendant is bound to discover all the facts within his knowledge, and to produce all documents in his possession, which are material to the case of the plaintiff. However disagreeable it may be to make the disclosure; however contrary to his personal interests; however fatal to his claims, he is compelled to set forth on oath, all he knows, believes, or thinks in relation to the matter in question.

The court will not order the production of confidential communications between solicitor and client, which took place either in the progress of the suit, or with reference to the suit previous to its commencement. Confidential communications between attorney, or counsel and clients, anterior to the suit and without reference thereto, are not privileged.

In a suit for specific performance, cases submitted to counsel subsequent to the contract, relating to the sale, the objections taken by the purchaser to the vendor's title, the steps taken by the vendors to clear up the ob-

jections, &c.: Held to be communications made with reference to the dispute which resulted in the litigation, and privileged.

Communications between the assignees and the Commissioner of the Insolvent Debtors' Court, held not privileged.

Books, &c., relating to the matters in question, in the possession not the property of the defendant's solicitors, not ordered to be produced. *Flight v. Robinson*, 8 Beav. 22.

Cases cited in the judgment: *Hughes v. Bidulph*, 4 Russ. 190; *Vent. v. Pacey*, 4 Russ. 193; *Garland v. Scott*, 3 Sim. 396; *Bolton v. Corporation of Liverpool*, 3 Sim. 467, 1 Myl. & K. 88; *Nias v. Northern and Eastern Railway Company*, 3 Myl. & Cr. 357.

3. **Title.**—A statement in an answer that certain documents admitted to be in the defendant's possession form part of the evidence of his title, and do not form part of the title of the plaintiff to the premises in question, is not sufficient to protect them from production on motion; if they be in their nature such as may furnish evidence in support of the plaintiff's case, and the answer does not distinctly deny that they do.

Semble, a defendant who has answered cannot resist a motion for production of documents referred to in his answer, on the ground that the bill is open to a general demurrer for want of equity. *Marquis of Bute v. Glamorganshire Canal Company*, 1 Phill. 681.

Cases cited in the judgment: *Wako v. Conyers*, 1 Eden, 331; *Duke of Beaufort v. Smith*, 1 Hare, 507; *Adam v. Fisher*, 3 Myl. & Cr. 526.

RECITALS.

R. C., subsequently to the date of certain deeds, was found a lunatic under a commission; certain orders and a report in the lunacy matter, containing recitals and statements which were not evidence, and might influence the jury in finding their verdict, were sent to the jury, the judge informing them that the recitals and statements were not evidence of the facts contained therein, and cautioning them not to regard them. The court refused a new trial on that ground. *Creagh v. Blood*, 8 Ir. Eq. Rep. 434.

SOLICITOR.

See *Privileged Communications*.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Jorden v. Jones. Dec. 11 and 21, 1846.

ACKNOWLEDGMENT OF DEED BY MARRIED WOMAN.—JURISDICTION.

The court will not compel a married woman to execute and acknowledge, pursuant to the *Fines and Recoveries Act*, a deed of conveyance of property in which she has a beneficial interest.

THE facts of this case are briefly these:— Mary Jones, the wife of one of the defendants, previously to her marriage, had invested a sum of money on a mortgage to her in fee; and as a security for the repayment of a sum advanced to her brother by the plaintiff, had deposited with the latter the title-deeds of the mortgaged premises. After the marriage of Mrs. Jones, a settlement was made of her property which included the said mortgage money. The bill was filed for the purpose of realising the sum due from the brother, and prayed, amongst other things, for a foreclosure or sale of the first-mentioned mortgage. A decree for sale of the premises was ultimately obtained, the usual reference made to the Master, and all necessary parties were ordered to join in executing and acknowledging proper deeds of conveyance to the purchaser, when approved by the Master. These deeds Mary Jones declined to execute and acknowledge when tendered; and thereupon an order was obtained, according to the new practice, from Vice-Chancellor *Wigram*, directing her, within four days after service, to execute the said indentures, and acknowledge them before one of the Masters, or two of the perpetual commissioners for taking the acknowledgments of deeds by married women.

Mr. *Cooper* and Mr. *Saunders* now contended that the last-mentioned order could not be supported, inasmuch as the certificate and memorandum of acknowledgment required by the Fines and Recoveries Act, 3 & 4 W. 4, c. 74, must specify that the execution and acknowledgment were free and voluntary on the part of the wife. Those instances wherein the court had formerly ordered fines to be levied were either by consent, or cases in which the husbands were not excused from performing their contracts upon the grounds that their wives would not join in levying the fines. They cited *Martin v. Mitchell*, 2 Jac. & Walk. 425; *Morris v. Stephenson*, 7 Ves. 474, and *Withers v. Pinchard*, there cited; *Davis v. Jones*, 4 Bos. & Pull. 267; two Irish cases, viz., *Burke v. Crosbie*, 1 Ball. & Beat. 489, and *Kennedy v. Daly*, 1 Scho. & Lef. 355; Sug. Vend. & Pur. pp. 231-2. (11th edition,); *Emery v. Wase*, (8 Ves. 516,) and the other cases cited in Cruise's Digest under the head Fine, pp. 178 9, (4th edition); Daniel's Practice, vol. 1, p. 168, (last edition by Mr. Headlam); and they referred to the statutes of 1 W. 4, c. 36, (Contempt); 1 W. 4, c. 60, (Trustees); and 4 & 5 W. 4, c. 78, (Contempt, Ireland,) wherein the 11th rule of the English contempt act is omitted.

Mr. *Giffard*, for the plaintiff, argued, that it would be anomalous if the court could decree a sale, foreclosure, or settlement, (as in *Sturgis v. Champneys*, 5 Myl. & Cr. 97,) of a married woman's real estates, but could not compel her to convey. No complaint was made of the decree for sale, or of the order that all necessary parties should join in the conveyance. He could not produce any case where a wife had been committed for not levying a fine, but it was clear that the court had authority to

compel obedience to its orders; its jurisdiction in these matters was *in personam*, not *ad rem*, and had not been taken away by the Fines and Recoveries Act. That statute requires these assurances to be made freely and voluntarily; so also did the old Fines' Act, 18 Edw. 1, St. 4, *de modo levandi*, &c. Previously to the English Contempt Act the wife must have gone to prison, but it was understood that the learned counsel (Mr. *Brodie*) who drew the Fines and Recoveries Act, was of opinion that it was not affected by the Contempt Act, which was not brought under his notice when preparing the former.

Mr. *Cooper*, in reply, submitted, that it would be a solecism if this court coerced a person to perform an act which the statute and common law declared should be freely and voluntarily done. No personal decree could be made against a *feme covert*. Daniel's Ch. Prac. vol. 1, p. 215, (1st edition.) The Trustee Act might be applicable. *King v. Leach*, 2 Hare, 5. In the case of a trustee, under circumstances similar to the present, Vice-Chancellor *Knight Bruce* would not interfere; and upon application to the late Chancellor, his lordship expressed great doubts of the jurisdiction, and the difficulty was evaded by the consent of the lady being obtained in consequence of a strong remonstrance from his lordship.

During the argument Mr. *Cooper* was reminded by his solicitor of an unreported case, *Foxon v. Foxon*, in which, as was stated, this principle had been decided, first by the Master of the Rolls, and afterwards by the present Chancellor, about the year 1835, shortly after his lordship first took the seals.

Dec. 21.—The Lord Chancellor observed, that in the case of *Foxon v. Foxon*, the present Master of the Rolls had decided, (and his lordship's decision had been confirmed on appeal,) that such an order as the present could not be sustained, and it must therefore be reversed. It was not necessary, under these circumstances, to consider what course the parties ought to adopt.

Mr. *Giffard* was proceeding to state that *Foxon v. Foxon* was a case in which a ward of the court who married without its sanction, had refused to execute a settlement of her property as prepared by the Master, but

The Lord Chancellor said, that he had been supplied with all the papers in that case, and having gone carefully through them, was of opinion that the order could not be made.

Rolls Court.

Brown v. Home. Dec. 14, 1846.

PRO CONFESSO.—ORDERS OF 1845.

Under the Orders of May, 1845, a bill must be produced at the hearing, in order to be taken pro confesso, though there is one defendant only, and the bill, when so produced, is to be taken, pro confesso, without any other order.

Mr. *Glasse* applied to the court for direction,

as to the practice to be observed in taking bills, *pro confesso*, where there was only one defendant, stating that the officers of the court felt doubt whether, besides the order that the bill should be produced at the hearing, there must not also be an order to take the bill *pro confesso*.

Lord Langdale said, it appeared to him that there could be no doubt upon the point. The old practice was, that when there was one defendant only, the decree to take the bill *pro confesso* might be made without the production of the bill at the hearing. The new orders intended to put the practice in the case of a suit with one defendant only, in the same state as in the case where there were several defendants. The bill must be produced at the hearing in each case, and in each case the order for the production of the bill at the hearing was the order for taking the bill when produced *pro confesso*.

Vice-Chancellor of England.

Maitland v. Irving. Nov. 19, 1846.

GUARDIAN AND WARD.—INJUNCTION TO STAY PROCEEDINGS AT LAW.

Securities obtained by a guardian from his ward will be relieved against, although they may have passed into the hands of third parties, provided the holders of them can be affected with notice of the relationship existing between the parties at the time the securities were obtained.

THIS was a motion to dissolve an injunction obtained by the plaintiff to stay proceedings in an action brought against her by the defendants for the recovery of a sum of 3,000*l.*, under the following circumstances:—The plaintiff, whose property amounted to about 80,000*l.*, was placed at an early age under the guardianship of Mr. Donald M'Cleane, with whom she has always resided. She attained her age of 21 years in Sept., 1844, and in January, 1846, Mr. M'Cleane, having purchased the coal business of the defendants, Messrs. Irving and Brown, for 5,000*l.*, he prevailed upon the plaintiff to join him in a guarantee for payment of the purchase money, and accordingly five promissory notes for 1,000*l.* each were drawn, and a guarantee given by the plaintiff for payment of the purchase. Subsequently an arrangement was made by which this guarantee was cancelled, and the plaintiff gave her cheque on her bankers for 3,000*l.*, and a further guarantee for 1,200*l.* An action was brought by the defendants on the cheque, which was tried on the 5th of June, 1846, and they recovered a verdict, whereupon the plaintiff on the 18th of June filed her bill in this court, and obtained an injunction to stay execution. The defendants, having put in their answer, now moved to dissolve the injunction.

Mr. Bethell and Mr. Bazalgette, in showing cause against dissolving the injunction, urged, that the circumstances of the case were sufficient to show that the defendants were perfectly

aware of the necessitous situation of Mr. M'Cleane at the time the cheque was obtained, and that he was taking an undue advantage of the influence he had obtained over the plaintiff in procuring her signature to the cheque; and the court invariably protected the interests of parties who were subject to such influence. They cited *Hatch v. Hatch*, 9 Ves. 292; *Archer v. Hudson*, 7 Beav. 581, and on appeal, 13 Law Jour. 211.

Mr. Humphrey and Mr. Bailey, contra, insisted, that there was no proof of collusion between the defendants and Mr. M'Cleane, nor anything to show that they were aware of any undue influence having been exercised. The transaction was simply a purchase by Mr. M'Cleane of the defendants' business for 5,000*l.*, for which he had obtained the plaintiff's guarantee, and the court ought not to interfere. The cases in which the court had interfered were those where the consideration was only voluntary. They cited *Hugonin v. Baseley*, 13 Ves. 105; *Sanster v. Foster*, Cr. & Phil. 302.

The Vice-Chancellor said, that although the defendants might not be aware of the principles upon which this court acted, it was clear that Mr. M'Cleane had explained to them that the plaintiff was his niece, and it was very extraordinary that men who were engaged in business should have looked upon this transaction as a matter of course; that a person like Mr. M'Cleane should have procured from the plaintiff an indemnity to give to the defendants, and that they should not have taken pains to ascertain whether the plaintiff was quite a free agent or subject to the influence of Mr. M'Cleane. It was singular that upon the mere suggestion of the guardian the defendants should, without further inquiry, acquiesce in his proposal for taking his ward's guarantee. The whole transaction, said his Honour, appears to be based upon the understanding that Mr. M'Cleane had influence over his ward and would induce her to sign the guarantee, and it was clear the defendants relied upon that influence being exerted. The case, therefore, stood thus:—The defendants knowing the defenceless situation of the young lady, combined with M'Cleane, who also well knew it, to take advantage of it for the benefit of all three, who consequently stood in the same situation; and it came within the rule of the court as to persons exercising an influence over a ward, just after her attaining her majority, so that the injunction must be continued.

Mr. Humphrey then asked, that his Honour would direct the amount recovered in the action to be brought into court, but

His Honour said, that would create additional hardship, as the party who had obtained an unequitable control over the plaintiff's assets was still exercising the same influence, and he should not in such a case make any order for bringing the money into court.

Vice-Chancellor Wigram.

Robertson v. Southgate. M. T., 1846.PARTIES.—ATTACHMENT.—BANKRUPTCY.—
NOTICE OF MOTION.

Where a defendant becomes bankrupt before putting in his answer, and the plaintiff files a supplemental bill against his assignees, it is improper to sue out process of attachment for contempt in not putting in an answer.

A motion to discharge the attachment should be made in both the original and supplemental suits, although the plaintiff had become bankrupt, and the solicitor was his solicitor, as well as solicitor to the assignees.

The court, upon amendment of the notice of motion by entitling it in both suits, however, merely stayed the proceedings.

MR. Romilly and Mr. Torriano moved, on behalf of the defendant, Henry Southgate, to discharge an attachment which had been issued against him, on the 11th of August last, for not putting in his answer to the original bill, or that all further proceedings might be stayed as against the said defendant. The original bill was filed on the 6th of December, 1843, by the plaintiff, for the purpose of setting aside a partnership agreement between himself and Southgate, upon the ground of fraud, and for an account. The defendant was made a bankrupt on the 14th of that month upon a separate fiat, and on the 4th of January, 1844, a joint fiat against the plaintiff and defendant was issued. The assignees were chosen and appointed on the 23rd of that month; on the 15th of Feb., the fiat of the 14th December was ordered to be annulled, the proofs and proceedings under the separate fiat were ordered to stand as proofs and proceedings under the joint fiat. On the 22nd of March last the bill was amended, and on the same day a supplemental bill was filed, the assignees being made parties, the bill praying that the plaintiffs in such supplemental suit might have such and the same relief as would have been given had not the original plaintiff become bankrupt. By the bankruptcy, an abatement had taken place, and the attachment was wholly irregular.

MR. K. Parker and Mr. Greene opposed the motion. The bankruptcy of the party in this case was not a complete abatement, and if it were, it should have appeared upon the record. The effect of the supplemental bill was merely to substitute the assignees for the bankrupt. The fact of the bankruptcy now only appears by affidavit. The court always requires an allegation on the pleadings of the fact as well as evidence. *White on Revivor*, and *Supp.* 74, 76; *Whitmore v. Davis*, 1 Ves. & B. 545; *Turner v. Robinson*, 1 S. & St. 3; *Macworth v. Marshall*, 3 Sim. 368; *Booth v. Smith*, 5 Sim. 639.

Nov. 21. Sir James Wigram, V. C., now gave judgment. This was an application by the defendant to discharge an attachment which had been issued against him for want of an answer, or in the alternative, to stay further pro-

ceedings against him. It appears that the defendant, who made the application, had become bankrupt before putting in his answer. When that happens, the plaintiff may, without any irregularity, call for an answer, and so put the defendant to insist on his bankruptcy, either by plea or answer. But in that case, if the plaintiff, instead of so proceeding, files a supplemental bill against the assignees of the bankrupt, it is not regular,—at least, it is not proper,—afterwards to sue out process of contempt against the bankrupt for want of his answer, that is, after putting upon the record the fact of the bankruptcy; nor is that proceeding at all necessary, because the clerk of Records and Writs, as a matter of course, issues the usual certificate for setting down the cause without answer. So, where both the plaintiff and the defendant become bankrupt, and different assignees are appointed, and a bill is filed by the plaintiff's assignees against the defendant's assignees to have the benefit of the suit. In the case before me, the assignees, both of the bankrupt plaintiff, and of the bankrupt defendant, are the same, and before the supplemental bill was filed, the proceedings to compel an answer might have been taken in the name of the plaintiff; but after that bill is filed, the assignees cannot properly proceed against a party whose rights and liabilities they allege, by their supplemental bill, have been transferred to them. But although it may not be proper for a party who puts upon the record the facts of the bankruptcy, to take proceedings in the name of the alleged bankrupt as if no bankruptcy had happened, it does not therefore follow that the plaintiff, (the alleged bankrupt) may not proceed in his own name. It was, therefore, that I thought it right to inquire, whether in the present case the attachment which issued in the name of the bankrupt plaintiff, in the original cause, was the act of the plaintiff insisting upon his own right to proceed, and disputing the right of the assignees to proceed by supplemental bill, or whether the proceeding was that of the assignees. It was properly admitted that it was, in truth, the act of the assignees. The solicitor of the plaintiff is now the solicitor of the assignees. The two suits are one. The attachment was issued upon the supposition that it was necessary to obtain from the defendant an answer in the original suit to enable the assignees to prosecute the suit for the plaintiff, as it was said, that the clerk of records and writs would not grant the usual certificate without it. It is admitted that they would grant the usual certificate in the case I have first suggested. I cannot myself discover any distinction in substance between the two cases. The proceeding, in a case like the present, is no more behind the back of the alleged bankrupt than in the case I have suggested. But I think, without saying the proceeding is irregular, (for upon the face of it, it does not appear to be so,) it is not proper for the assignees to take the steps they have taken. But I think the party making the motion should have made his motion in both the causes, the original and sup-

plemental cause. It was said that he could not do that, because he was not a party to the supplemental suit. The case of the plaintiffs in the supplemental suit, and that of the defendant in this motion, are one, and the plaintiffs in the supplemental suit are represented by the defendant as to rights and liabilities. It is the common case of a supplemental bill filed to make the case perfect, and the party is entitled to make his motion in both causes. I think the right course is not to discharge the order for irregularity, but to stay the proceedings; but the defendant must amend his notice of motion before I can do it regularly. Let the motion stand over to next seal to amend the notice of motion, and to serve the plaintiffs with a correct copy of such amended notice. I give leave to amend the notice of motion, because the assignees may afterwards say that they have not been served at all, in point of form. I go upon this ground, that after the plaintiffs have put upon the record the fact of the bankruptcy, it cannot be proper to go on in the suit, as if there were no bankruptcy.

Queen's Bench.

Hall v. Barratt. Hilary Term, 1847.

ACTION ON THE CASE.—EVIDENCE.

In an action on the case for improper and negligent driving, in which the declaration alleged generally, that the injury to the plaintiff was caused by the improper and negligent driving of a horse and phaeton by the defendant; it was held competent for the plaintiff to show that the defendant drove the horse in a bit or bridle that was not suitable for the purpose.

Improper driving means a neglect to possess, or to use, the requisite degree of skill or strength for the safe conduct of the horse.

THIS was an action on the case. Plea not guilty. The injury arose from the defendant driving his phaeton against the carriage of the plaintiff. The declaration alleged negligence on the part of the defendant in the usual manner; and there was also an allegation that the phaeton of the defendant was low and disproportioned to the size of the horse, so that the defendant could not have perfect control over the horse. Evidence was given to show that the horse was a high spirited animal, and that it was not driven in a bit or bridle that ought to have been used for such a horse. The defendant contended that there was no negligence, and that the injury arose from unavoidable accident. Lord Denman, C.J. before whom the case was tried, told the jury, that if the defendant used a bit or bridle that was not suitable for the horse and an injury ensued, that he would be guilty of negligence. Verdict for the plaintiff.

Mr. Whitehurst now moved for a rule to show cause why there should not be a new trial on the ground of misdirection, because there was nothing in the declaration that should lead the defendant to suppose that any evidence

would be given that the defendant had driven the horse in an improper bit or bridle, so as to make him guilty of carelessness or negligence.

Mr. Justice Patteson. The declaration contains many words which are not usual; they may not do any harm, but certainly they do no good. In the first place, the declaration alleges that the defendant was possessed of a high-spirited horse. Now that is nothing; and the declaration shows it, by the next averment, to be nothing. That averment is, that the defendant disregarded his duty, and negligently and improperly drove the horse. So there the inducement is at an end; and the careless and improper driving of the horse becomes material. Then comes a sort of parenthesis about the size of the phaeton, which did not enable the defendant to govern the said horse in a reasonable and proper manner. That averment is quite useless; and the declaration then goes on to say that the horse was so improperly and negligently driven, that by reason thereof the plaintiff's carriage was injured. If that allegation was made out in fact, then it is clear that the plaintiff's right to the verdict is complete, for the whole question in a case of this kind, is negligent and improper driving. To enable a man to drive a horse properly in the public streets, he is bound to have all proper materials required for that purpose. If the materials he has are insufficient, he has not the means carefully and properly to drive. The facts here brought the case plainly and substantially within the words of the declaration; and if he drove the horse improperly, and by such improper driving injured the plaintiff's carriage, the right of the plaintiff to maintain the action is equally established, whether that improper driving arose from negligence, or want of means to drive the horse in a proper manner.

Mr. Justice Coleridge. I am of the same opinion. Improper driving is, perhaps, a wrong term: it is neglect to possess, or to use, the requisite degree of skill or strength for the safe conduct of the horse. Every man must know the qualities of his horse, and must provide means to prevent them being the cause of mischief.

Mr. Justice Erle. I am of the same opinion. A want of skill or precaution will render a man liable for the mischief occasioned by the horse he drives. The danger, and the consequent necessity for precaution, must be calculated with respect to the animal, the speed, and the place. If proper precautions are not taken, the defendant is truly described as not having properly driven.

Lord Denman, C.J., concurred.

Rule refused.

Queen's Bench Practice Court.

Doe Dem.—Fowler v. Roe. Hilary Term,

Jan. 11, 1847.

(Coram Erle, J.)

JUDGMENT AGAINST THE CASUAL EJECTOR.
—SERVICE OF DECLARATION AND NOTICE
IN EJECTMENT.—ATTORNEY.

In a motion for judgment against the casual

ejector for premises of which the tenant in possession was an attorney: Held, That the fact of the tenant in possession being an attorney made no difference in the nature of the requisite service of the declaration and notice in ejectment, and that service on the daughter of the tenant in possession on the premises was insufficient.

Hawkins moved for a rule for judgment against the casual ejector. It appeared by the evidence of the clerk to the plaintiff's attorney, that he attended on the first of January instant at the house of James Chilton, the tenant in possession, who was an attorney of this court, with a view of serving him with the declaration in ejectment; he there saw the daughter of the said James Chilton, on whom he served copy of the declaration and notice, and commenced reading the original notice over to her, when she ran away, and shut the door in his face, before he could conclude doing so. It was also stated that the deponent had on various occasions endeavoured to serve the defendant personally, but had been unable to do so; it was also sworn that the defendant was an attorney holding possession of the premises in question after the expiration of a notice to quit, and that he kept his doors locked to prevent any one entering the house to serve him.

Erle, J. Unless the fact of the defendant's being an attorney makes any difference, this is clearly not a good service; now I think that the cases against attorneys, are limited to where the attorney is acting in his capacity of attorney.

Hawkins. But here the declaration and notice were served, as all notices would be, at his house. The reason of its being necessary to explain the object of the notice is, that the party on whom a notice of declaration in ejectment is served may not understand what it means, which cannot be the case here, as the defendant is an attorney. In *Doe Dem. Bower v. Roe*, 1 Dowl. N. S. 923, service of a declaration and notice in ejectment upon the clerk of an attorney was held to be sufficient.

Erle, J. Yes, but there the clerk was an authorised agent; a clerk left in an attorney's office is a person who must be taken to be placed there to act for the attorney in his absence.

Hawkins. In this case the daughter is the agent.

Erle, J. I think there is no ground for the distinction attempted to be drawn between an attorney and the rest of the community; I do not see any difference between him and any one else, unless he is acting in his capacity of an attorney; I think, therefore, that you ought to take the same steps to serve him as in ordinary cases.

Hawkins. Then, perhaps, your lordship would still think this service on the daughter sufficient for a rule nisi as in ordinary cases.

Erle, J. I only see one attempt sworn to to serve the defendant on the premises. The affidavit does say that various attempts have

been made to serve him, but does not state that those attempts were made at the premises; if you can find that any of these attempts have been made on the premises, you may amend your affidavit in that particular, and in the mean time enlarge your rule.

Rule enlarged accordingly.

Common Pleas.

Maunder v. Collett.—Michaelmas Term, Nov. 17, 1846.

JUDGE'S ORDER—PARTICULARS OF DEMAND —WAIVER BY DEFENDANT.

After an order for particulars of the plaintiff's demand, with a stay of proceedings, has been obtained and served, the defendant may, by giving a notice of abandonment of the particulars to the plaintiff's attorney, waive the order, and at the same time proceed in the action by delivering his pleas or demurrer.

ON a former day in the term a rule had been obtained, calling upon the defendant to show cause why the demurrer and pleas delivered in this case should not be set aside with costs. The action was in debt, and the declaration containing three counts had been delivered on the 24th of October. On the following 27th, an order for particulars, with a stay of proceedings, had been obtained and served on the plaintiff's attorney, and on the 4th of November, no particulars having been then delivered, the defendant's attorney served on the plaintiff's attorney the following notice—"I hereby waive the delivery of particulars herein pursuant to the order, &c." Along with that notice were also served a plea to two of the counts in the declaration, and a demurrer to the third.

Pashley now showed cause. There are two cases which it is said support the application in this case, *Burgess v. Swayne*, 7 B. & C. 485, and *Wickens v. Cox*, 6 Dowl. 693. But it is submitted that they are quite distinguishable, and the dictum of *Parke, B.*, in the latter case unfavourable to the defendant, was not necessary to the decision of the case. The question to be considered here is one of principle, and a party, it is apprehended, may clearly waive any benefit conferred upon him by a judge's order. *Vin. Abr. Waiver D. pl. 4.* The case of *Reg. v. St. Pancras*, 3 Q. B. 347, might also be relied upon as an authority against the rule.

Dowling, Serjeant, in support of the rule. On the authority of the two first cases cited, and by analogy to the rule of court, Hil. 2 W. 4, the defendant cannot waive the order, having thought proper to draw it up with a stay of proceedings. The only mode of getting rid of the order was to apply to the court or a judge at chambers.

Wilde, C. J. What can be the use of putting a party to the expense of a summons and order before a judge?

Dowling, Serjeant. The expression of *Parke, B.* in *Wickens v. Cox* is decisive.

Maule, J. In that case Mr. Baron *Parke*

treats the order as absolute for a stay of proceedings against the defendant. But the meaning, I think, is not that the proceedings shall be stayed absolutely, but merely until the plaintiff shall have complied with the order, and that the defendant shall not be compelled to proceed in the cause until the plaintiff shall have so complied.

Dowling, Serjeant. That may be so, and yet it is submitted the defendant cannot get rid of the order by a mere waiver.

Maule, J. If my interpretation of the order be correct, the defendant need take no other step, and is now at liberty to go on.

Wilde, C. J. A defendant may waive an order for security of costs, and why may he not do the same with respect to the order in question?

Rule discharged with costs.

Court of Exchequer.

Black v. Lowe. Michaelmas Term, Nov. 19, 1846.

JUDGE'S ORDER.—RULE OF COURT.

A rule to make a judge's order a rule of court with costs, is absolute in the first instance if moved upon the affidavit required by the Reg. Gen. Trin. 3 Vic.

In this case an order had been made by *Erle*, J., that the defendant be discharged out of the custody of the sheriff of Middlesex, and that the plaintiff do pay the costs of the application. The costs were taxed at 5*l.* 1*s.*, and a demand of payment was personally made on the plaintiff, who was at the same time served with a copy of the judge's order, and the master's allocatur. The demand not having been complied with,

Prentice moved to make the judge's order a rule of court, and that the plaintiff pay the costs of the application. The only question is, whether a rule of this kind is a rule to show cause, or whether it is absolute in the first instance. The practice in this court has always been for such rules to be absolute in the first instance, but a different practice would seem to prevail in the Bail Court, where, in a late case, *Wightman*, J., refused to grant more than a rule nisi. *Spicer v. Bond*, 2 Dow. N. S. 955. He also cited *Reg. Gen. T. 3 Vic.*; *Thompson v. Billing*, 11 M. & W. 361.

Parke, B. It has always been quite a matter of course to make a judge's order a rule of court, but in order to get the costs of the application, the party must come prepared with the affidavit required by the rule of court. That has been done in this case, and the rule will therefore be

Absolute.

Court of Exchequer.

Ex parte Hodson in re Hodson. Michaelmas Term, 1846.

SURRENDER.—PETITION.

A bankrupt, who has not surrendered, may yet be heard, upon a petition for annulling

the fiat, provided, that he was not in default, at the time when it was presented.

THE bankrupt, in this case, presented a petition for the purpose of annulling the fiat, upon the grounds, that there was no proof of trading, and no act of bankruptcy.

Upon the petition being opened, *Mr. Russell*, for the respondents, objected to its being heard, inasmuch as the bankrupt had not yet surrendered. It appeared that the fiat bore date, on the 6th of July last, and that the petition was presented on the 20th. Some delay had taken place in consequence of the time required to answer the affidavits. Cases cited, in support of the objection. *Ex parte Jones*, 11 Ves. 409; *Ex parte Drake*, Mont. 486; *Ex parte Kirkman*, 1 Mon. & A. 709; *Ex parte Austen*, 1 Mont. D. & De G. 247; *Ex parte Drake*, 2 Dea. & C. 91; *Ex parte Garnett*, 1 De Gex. 95.

Mr. Bacon and *Mr. Glasse* appeared in support of the petition.

Sir J. L. Knight Bruce, Chief Judge.—Since the Bankrupt Court Act was passed, a subsequent statute provided that unless the bankrupt, within a certain time, presented a petition, the fiat should be valid against him for ever. He has but three weeks; it may be, but three days,—and sometimes, it may be, no day at all, within which to do what is required of him. Unless he does it within that time, although he has forty-two days to surrender, the fiat of bankruptcy remains against him for ever, whether he is peer or commoner, churchman or layman, trader or not trader. There may be circumstances, which may make it impossible for him to comply. I thought that the just construction of the act was, that it did not limit the discretionary powers of the court to annul. Lord Lyndhurst thought otherwise. I shall act upon his opinion. I think that as this petitioner is proved to have been in no default at the time when the petition was presented, it is my duty to hear it.

The petition was accordingly heard. †

CHANCERY CAUSE LISTS.

Hilary Term, 1847.

Lord Chancellor.

APPEALS.

To fix a day.	{ Strickland	Strickland	} appeal
	{ Ditto	Boynton	
	{ Ditto	Strickland	
S. O. G.	{ Dalton	Hayter	} appeal
	{ Attorney-Gen.	{ Masters & Wardens, &c. of the City of Bristol.	
S. O.	Black	Chaytor do.	
S. O.	Johnson	Reynolds fur. dirs. by ord.	
S. O.	Watts	Hyde	appeal
	Morison	Morison	do.
S. O. G.	Attorney-Gen.	{ Mayor, &c., of Newcastle-upon-Tyne	} appeal
	{ Parker	Morrell	
	{ Ditto	Whitmore	} appeal, pt. hd.
	{ Ditto	Morrell	
	Brighton	North	appeal
	Penny	Turner	do.

Caton	Rideout	do.
Peacock	Kernot	do.
{ Wilfink	Bentfinck }	do.
{ Ditto	Ditto }	
{ Chambers	Smith }	do.
{ Case	Ditto }	
Thornycroft	Warren	do.
{ Sowden	Marriott }	do.
{ Flight	Ditto }	
Heath	Chadwick	do.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Cooper v. Webb, dem.
 Lenaghan v. Smith, dem.
 Daniel v. Hill.
 Cope v. Lewis.
 Attorney-Gen. v. Trevelyan.
 Stert v. Cooke.
 Hodgkinson v. Barrow, fur. dirs. and costs.
 Colbourn v. Coling.
 Hickson v. Smith, at deft.'s request.
 Palmer v. Pattison fur. dirs. and costs.
 Minter v. Wraith, fur. dirs. and cause.
 Hemming v. Spiers, exons.
 Chambers v. Waters, exons.
 Smith v. Robinson.
 Foster v. Vernon, fur. dirs. and costs.
 Vale v. Sherwood, 7 causes, ditto.
 Haffenden v. Wood, exons.
 Branscomb v. Branscomb, fur. dirs. and costs.
 { Stammers v. Halliby, 3 causes, fur. dirs.
 { Ditto v. Battye, by order.
 Dorville v. Wolff, fur. dirs. and costs.
 Richards v. Patterson, fur. dirs. and costs.
 Woodman v. Madgen, fur. dirs. and costs.
 Attorney-Gen. v. Pearson, exons. and fur. dirs.
 Dawson v. Chappell, fur. dirs. and costs.
 Wait v. Horton ditto
 Montague v. Cator, fur. dirs. and cause.
 Groom v. Stinton, 4 causes.
 Baxter v. Abbott, fur. dirs. and costs.
 De Beauvoir v. De Beauvoir, fur. dirs. and costs.
 Beale v. Warder, rehearing.
 Turner v. Simcock, fur. dirs. and costs.
 Booth v. Lightfoot, fur. dirs. and costs.
 Ludlow v. Guilleband, fur. dirs. and costs.
 Howell v. Saer.
 Attorney-Gen. v. East India Company.
 Roberts v. Cardell, exons.
 Warwick v. Richardson, exons. and fur. dirs.
 Morgan v. Kingdon, fur. dirs. and costs.
 Lewis v. Hinton, fur. dirs. and costs.
 Wilson v. Williams.
 Robotham v. Amblett, exons.
 Ellison v. Clark.
 Bailiff, &c. of Bridgnorth v. Collins, fur. dirs. and costs.
 Gaches v. Warner, 2 causes.
 Birch v. Joy, fur. dirs. and costs.
 Wilson v. Jones, exons.
 Day v. Slade, fur. dirs. and costs.
 Lufkins v. Lufkins, fur. dirs. and costs.
 Nightingale v. Goulbourn, fur. dirs. & costs.
 Green v. Bailey.
 Atkins v. Hatton, fur. dirs.
 Straker v. Wilson.
 White v. Briggs, exons, 3 sets, and fur. dirs.
 Damer v. Portarlington, 2 causes.
 Greenham v. Greenham, fur. dirs and costs.
 Burrow v. Hardey, fur. dirs. and costs.

Middleton v. Elliot, fur. dirs. & costs.
 Hyde v. Neate, exons. and fur. dirs.
 Milne v. Leo, fur. dirs. and costs.
 Bownass v. Abbott, exons.
 Langston v. Cozens, fur. dirs. and costs.
 Mapp v. Ellecock ditto.
 Hammer v. Hammer ditto and cause.
 S. O. C., Myers v. Macdonald, 2 causes.
 Jan. 13th, Wilson v. Wilson, exons., 2 sets.
 Garratt v. Lancefield, fur. dirs.
 Amey v. Walker, 2 causes.
 Ashburst v. Mill.
 Nicolas v. Nicolas.
 Kennett v. Tytherleigh
 Lovett v. Soames.
 Short, Jones v. Woods.
 Skinner v. Manser, 2 causes.
 Attorney-General v. Stone.
 Skey v. Ody, fur. dirs. and costs.
 Wall v. Wall, fur. dirs. and costs.
 Simpson v. Earles, 2 causes.
 Abram v. Ward.
 Elliott v. Lyne, 2 causes.
 Ewart v. Phillips, fur. dirs. and costs.
 Norton v. Hepworth.
 Belcher v. Locket, 2 causes.
 Kensit v. Cressey, 3 causes.
 Costobadie v. Costobadie, 2 causes
 Jackson v. Nottidge.
 Woodfall v. Bagster, fur. dirs. and costs.
 Odell v. Lockett.
 Wright v. Lilley.
 Gervis v. Gervis, fur. dirs. and costs.
 Fairfax v. Drought.
 Grant v. Hutchinson fur. dirs. and costs.
 Thompson v. Day ditto.
 Hall v. Hall.
 Calvert v. Richards.
 Field v. Bentley.
 Attorney-General v. Wilson.
 Muston v. Bradshaw
 Rawlins v. Berkett, fur. dirs. and costs.
 Bond v. Harvey
 Anderson v. Wright
 Vernon v. Rudd
 Smith v. Walters
 Lewes v. Lewes.
 Hicks v. Graham.
 Williams v. Powell, 2 causes.
 { Staklschmidt v. Self.
 { Ditto v. Lett.
 Warner v. Lett, 2 causes.
 Harris v. Green, ditto.
 Richards v. Griffiths, fur. dirs.
 Spire v. Spire, fur. dirs. and costs.
 Price v. Price ditto.
 Jennings v. Bonser, 2 causes, +
 Gray v. Seabrook.
 Ward v. Gardiner, fur. dirs. and costs.
 Sewell v. Murray, 3 causes.
 Whitehall v. Sanders, 2 causes.
 Burton v. Taylor, fur. dirs.
 Grundry v. Newbold.
 Cleaver v. Sloan, fur. dirs. and costs.
 Short, Hitchcock v. Jaques, 2 causes.
 Attorney-General v. Ward.
 Axe v. Andrews.
 Lea v. Smith.
 Brandon v. Brandon, 9 causes, exons.
 M'Farlane v. Underwood.
 Field v. Brown.
 Fitch v. Fitch, 2 causes.
 Hatchard v. Hatchard.
 Stanbury v. Dunning.
 Hoare v. Shaw.

Parlabeau v. Wickham.
Shewell v. Shewell, fur. dirs. and costs.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Simpson v. Edgeworth, 2 dems.
Hickman v. Hickman, plea.
Harvey v. Bull, do.
S. O. to apply, Dyer v. Crick.
Sanford v. Sanford, fur. dirs. and costs.
Jefferson v. Miller.
Cock v. Gustard.
Short, Taylor v. Simpson fur. dirs. and costs.
Bishop v. Cappel ditto.
Pilkington v. Wilson.
Neale v. Woodhouse.
Morris v. Bull.
Edwards v. Champion, 2 causes.
Moxhay v. Inderwick.
Petty v. Atherley.
Baddeley v. Carwen.
Hammond v. Baker.
Smith v. Wilkinson, 3 causes.
Downing v. Churchyard.
Habershon v. Burton.
Batterfield v. Rayner.
Tarte v. Phillips.
E. Tm., Atkinson v. Glover.
Mayor, &c. of Rochester v. Lee.
Howard v. Kirk.
Reddish v. Howard, 2 causes and petition.
Glascott v. Long.
Bradley v. Teale.
Smith v. Smith, 3 causes.
Parker v. Taylor.
Bellringer v. Blagrove.
Hemming v. Dingwall.
Bannister v. Ellis.
{ Kortwright v. McQueen. }
{ Ditto v. Barlow. }
Allen v. Snelling.
Johnson v. Corrie.
Evelt v. Greatwood.
Fenton v. Nalder.
Daubuz v. Peel, 2 causes.
To be fixed, Vanzeller v. Doorman, fur. dirs. and costs.
Brazier v. Piper.
Jan. 13, Blakey v. Marriner, cause and petition.
Hore v. Smith, 2 causes.
Stokeman v. Dawson.
Garbett v. Whitehead.
Bowmer v. Parkenson, fur. dirs. and costs.
Shelswell v. Preedy.
Short, Crafton v. Frith.
Craven v. Stubbins, 2 causes.
Burton v. Mount.
Stooke v. Vincent.
Hughes v. Griffith.
Burchett v. Howett.
Jan. 11, Dallimore v. Ball.
Smyth v. Lowndes.
Okill v. Whittaker.
Sargent v. Roberts.
Short, Stirling v. Boughton.
Rutley v. Gill.
Beeston v. Beeston.
Short, Snowden v. Marriott.

Vice-Chancellor Stigam.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

To fix a day, Lowes v. Lowes, fur. dirs. and costs.
S. O., Phillips v. Meinertzhagen.

Plowden v. Thorpe.
East. Tm., Maxwell v. Kiblethwaite, 2 causes.
After Term, Tolson v. Dykes, 3 causes.
Lewis v. Thomas.
Bull v. Pritchard, pt. hd.
S. O., Merry v. Barchard, fur. dirs. pt. hd.
{ Letts v. The London and Blackwall Railway }
Company.
{ The London and Blackwall Railway Company }
v. Letts.
Feb. 1, Stephenson v. Everatt, fur. dirs. and costs.
Pringle v. Smith.
Justice v. Langster.
Marsh v. Kingdom.
Raby v. Ridehalgh.
De Sola v. Mesnard.
Jones v. Coles.
Bennett v. Humberstone.
Tyler v. Morris, fur. dirs. and costs.
Brown v. Brown ditto.
Ingram v. Thorp.
Sharp v. Taylor, fur. dirs. and costs.
Wilson v. Johnson.
James v. Wynford.
Thompson v. Findlay, fur. dirs. and costs.
Stevens v. Pillun.
Say v. Creed, fur. dirs. and costs.
Butlin v. Masters ditto.
Attorney-Gen. v. Florance, suppl. bill.
Dowse v. Wilson.
Bennett v. Harry.
Watson v. Crawley.
Mellington v. Cook, fur. dirs. and costs.
De Menzies v. Desanges.
Vernon v. Nethersole.
Dawson v. Paver.
Lardin v. Binny, fur. dirs. and costs.
Gregory v. Booth ditto.
{ Salter v. Waller }
{ Matthews v. Clutton } ditto.
Robinson v. Purday.
Manser v. Jenner.
Tipping v. Clark.
Matthews v. Bowler.
Spencer v. Church.
Malcolm v. Scott, 2 causes.
Evans v. Cave.
Short, Hicks v. Hough, fur. dirs. and costs.
Lancaster v. King.
Attorney-General v. Governors of Harrow School.
Yearsley v. Yearaley, 2 causes.
Hughes v. Stable, fur. dirs. and costs.
Thirby v. Holloway.
Belsham v. Percival, at request of deft.
Williams v. Teale, 3 causes.
Cjipps v. Price.
Symes v. Eyre.
Attorney-General v. Croom, fur. dirs. and costs.
Shailers v. Groves, fur. dirs. and costs.
Kempson v. Abbott, fur. dirs. and costs.
Newton v. Sadler, fur. dirs. and costs.

COMMON LAW CAUSE LIST.

Crown Paper.

Hilary Term, 1847.

J. N. Ryalls, petition in error against The Queen defendant in error.
The Queen v. The Inhabitants of Crondall, pt. hd.
The Queen v. Edward Westbrook and others.
The Queen v. The Churchwardens, &c., of Bangor, mds. and petn.
The Queen v. The Inhabitants of St. Anne, Westminster, (de M. Jones.)

- The Queen v. The Inhabitants of St. Anne, Westminster, (de G. Wood.)
 The Queen v. The Inhabitants of St. Peter, Droitwich.
 The Queen v. Henry Bateman, (Special case on indictment.)
 The Queen v. The Inhabitants of East Stonehouse.
 The Queen v. The Inhabitants of Widecomb-in-the-Moor.
 The Queen v. The Eastern Railway Company, mds.
 The Queen v. The Inhabitants of Mendham.
 The Queen v. The Inhabitants of Blackburn.
 The Queen v. The Churchwardens, &c., of Bangor, (orders.)
 The Queen v. Henry Everist.
 The Queen v. The Council of Birmingham.
 The Queen v. The Inhabitants of Martin-cum-Grafton.
 The Queen v. The Inhabitants of Landkey.
 The Queen v. The Great Western Railway Company.
 The Queen v. The Great Western Railway Company.
 The Queen v. The Inhabitants of Clixby.
 The Queen v. Nathaniel Shipperbottom.
 The Queen v. The Churchwardens, &c., of St. George the Martyr, Southwark.
 The Queen v. The Churchwardens, &c., of St. George the Martyr, Southwark.
 The Queen v. The Inhabitants of Hartpury.
 The Queen v. Thomas Collins.
 The Queen v. The Inhabitants of Halesowen.
 The Queen v. The Overseers of Township of Oldham Union.
 The Queen v. The Justices of the West Riding of Yorkshire.
 The Queen v. William Richardson.
 The Queen v. Archibald Douglas, Esq.
 The Queen v. Thomas Phillips and another, Justices, &c.
 The Queen v. The Inhabitants of Alderley.
 The Queen v. Thomas Grimshaw.
 The Queen v. The Inhabitants of Rhoscolyn.
 The Queen v. The Inhabitants of Shalford.
 The Queen v. The Inhabitants of St. Giles-in-the-Fields.
 The Queen v. The Inhabitants of St. George, Bloomsbury.
 The Queen v. The Inhabitants of Stainforth.
 The Queen v. the Inhabitants of Mylor.
 The Queen v. The Inhabitants of St. Clement Danes.
 The Queen v. The Inhabitants of Dakinfield.
 The Queen v. The Inhabitants of Leeds.
 The Queen v. William Belton.
 The Queen v. Charles Saffrey.
 The Queen v. Morris Myers.
 The Queen v. The Churchwardens, &c., of Ashe.
 The Queen v. The Inhabitants of Hammersmith.
 The Queen v. Joseph Thompson.
 The Queen v. Joseph Thompson.
 The Queen v. The Inhabitants of Macclesfield.
 The Queen v. John Keen.
 The Queen v. The Inhabitants of Holywell.
 The Queen v. Henry Nichols.
 The Queen v. The Commissioners of the Town of Dudley.
 The Queen v. Thos Turk.

NISI PRIUS CAUSE LIST.

REMANETS FOR HILARY TERM, 1847.

Queen's Bench.

Middlesex.

Sir R. Sidney	Cabill	S. J. Macdonald (stayed)	Dt. Bolton
Johnson, Son, and W.	Rowe	Cope (stayed)	Prom. Chester
S. B. Hamer	Davies	S. J. Wilkinson (stayed)	Prom. Howard
J. S. Pearce and B.	The London and Black-	Archer	Prom. Jas. Morris
M. Fraser	williams	S. J. Whiteway (inj.)	Prom. Mardon and P.
Adlington and Co.	Basstone and another, ex-	Ross (inj.)	Dt. Chadwick
Elderton and H.	Fiddes	S. J. Wm. Toogood (inj.)	Prom. Campbell and A.
Johnson, Son, and W.	Cowther, admor., &c. (inj.)	Edwards and another, sur-	Dt. Williamson and H.
C. J. Jones	The Queen	S. J. Craufurd	Sci. fa. Wadeson
Sharpe and Co.	The Queen	S. J. Irving	Sci. fa. Daker and Co.,
Becke	Becke	S. J. Parish and another	Dt. Helme and Johnson
W. L. Donaldson	Tennant	S. J. South Eastern Rail. Co.	Ca. J. P. Fearon
W. H. Turner	Doe dem. Oliver & others	Coningham	Ejt. W. and R. B. Baker
R. C. Barton	The Queen	S. J. Haynes and others	Indt. John Porter
G. A. Macphail	Knill	S. J. Lovegrove	Pro. Bell
Jno. Lewis	Moon	Connop	Pro. Milburn
Capes and S.	Whyte	S. J. Calder, Bart.	Dt. Rooper and Co.
R. Comyn	Boosey	S. J. Davidson	Ca.
Thos. Kennedy	Souter	S. J. Grant and another	Ca. Keddel and Co.
Dod and W.	Campbell, Bart.	S. J. Bennett	Proms. A'Beckett and Co.
Hertslet and Co.	Pratt	Dance	Prom. Lewis and L.
Ford	Edwards and another, as-	Hicks	Dt. Kempson, G. and C.
Same	signees, &c.	Same	Dt. Kempson, G. and C.
Gregory and Sons	Ford	S. J. Lumsden	Dt. Parkes
Thomas M. Parker	Grieve	S. J. Hughes	Pro. Burrell
Johnson, Son, and W.	Clerk	S. J. Ormerod and another	Ca. Milne and Co.
	Ellis		

I. Lewis	Gadderer	S. J. Dawes	Pro. in person
G. Clark	F. Clark	S. J. Baldwin	Pro. Thos. Gill
Smith and Co.	Chubb	S. J. Solomon	Ca. Shirreff
Richards	Walker, Clk.	S. J. The London Assurance of Houses and Roads from Fire	Cov. Lowless and Son
W. C. Moncton	Wells	S. J. Paul	Tress. F. A. Lewis
Ward	Fry	S. J. Chapman	Pro. Wren
I. Robinson	Lenke	Warwick	Pro. Brace
Purrier and W.	Moens and others	Von Greeshelm	Proms. Metcalf and W.
Edward Smith	Hilton	Granville	Trial at Bar. Gatty and T.
Johnson	Ellis and another	S. J. Omerod and another (by proviso)	Ca. Milne and Co.
Lucena	Gibbons	Hunter and another	Ca. Kilgour and Co.
Jas. Wright	Low	Adair	Dt. Foster
Jas. Moon	Bennett	Harthill and another	Prom. W. Smith
Wollen	The Queen	Bonella and others	Indt. Bonella in person
			Appleton for Taylor
			Callow for Davis
Edward Smith	Hilton	Earl Granville	Trial at Bar. Gatty and Co.
Skinner	Wood	Hogson	Pro. Games
Kirkman	Bristow	Anstin	Covert. Crouch
Govett	Jacobs, pauper	Price and another	Tres. Rushbury
Wright	Rogers	Grazebrook	Tres. Rhodes and L.
Prosecutor in person	The Queen on the Prose- cution of Osman Giddy	Durant	Assump. W. W. Oldershaw
C. Jay	Hains	Hooper	Ca. Roche and Co.
Denton, jun.	Denton	S. J. Maitland and others	Pro. Hill and E.
Beart	Seabrook	Waters	Dt. Dyne and Co.
Same	Dalrymple	Myhill	Ca. Crouch
Vallance	Galt	Raworth	Pro. Leete
Chisholme	Doe dem. Hempson	Carr	Ejt. W. H. Cross
Ablett	Neal	Ward	Pro. Carlon and H.
Axford	Cotton	Way	Dt. Hughes
Wm. Smith	Unit	Smith, sued with, &c.	Dt. Ablett
Clarke	White and Wife, paupers	Spurging and another	Tres. Wire and Child for Spurging, Brown in person.
Tate	Brown	Collins, Esq.	Prom. Parker
Same	Same	Berkeley	Proms. Brundrett and Co.
Edward Barron	Harrison	Turner	Prom. Mardon and P.
Hawkins and Co.	Dudding and another	Bailey	Dt. Loughborough
H. T. Roberts	Doe dem Plimmer	Anderson	Eject. Hutson
Wickens	Rowlands	S. J. Samuel	Ca. E. Isaacs
Keene	Harriss	Richards	Ca. In Person
H. T. Roberts	Roberts	Todd, jun.	Dt. Fisher
Aldridge	Robins	Tinkler and others	Pro. Parker
W. Smith	Bonner, executor, &c.	Bonner	Proms. Richardson
C. Robson	Shorthouse and another	Beaumont	Proms. Ashley
Wm. Smith	Mullett	Thorp	Prom. T. Roberts
C. Rippon	Sharp	Butcher	Pro. in person
Dolman and S.	Hall	Halstead	Pro. E. Lambert
Thomas M. Parkes	Clerk	Harrison	Pro. Oldershaw
Chisholme and Co.	Doe dem Mable	Abbott	Eject. Wight
Dickson and O.	Alsager and others	Furby and another	Dt. Davies and E.
Masterman	The Queen	Mary, the wife of Henry Dixon	Indt. H. T. Roberts
Strutt	Carter	Camp	Ca. Homfray
Cunningham	Parratt	Freke, Esq.	Proms. Keane
I. Fallows	Bell and Wife	Brown	Proms. Chas. Young
Hill and E.	Hill	Daniel	Proms. G. & W. C. Smith

LAW PROMOTIONS.

NEW POLICE MAGISTRATE.

T. J. Arnold, Esq., of the Northern Circuit, and Revising Barrister of the City of London, has been appointed to succeed P. Bingham, Esq., as one of the Magistrates of the Police Court, Worship Street. Mr. Bingham succeeds to the vacancy in the Police Court, Marlborough Street, on the resignation of E. H. Maltby, Esq.

CLERK OF ASSIZE FOR THE OXFORD CIRCUIT.

The Lord Chief Justice has appointed Claude Wilde, Esq., Clerk of Assize for the Oxford Circuit, *vice* John Bellamy, Esq., deceased.

THE EDITOR'S LETTER BOX.

We have gladly received the further communication from the promoters of the Law Clerks Literary and Scientific Institution. The letters of G. W.; "Tacitum;" and S. M.; shall be attended to.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE,

SATURDAY, JANUARY 23, 1847.

“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

HILARY TERM.—PROCEEDINGS OF THE COURTS.

THE Term commenced with more than an ordinary degree of professional bustle and expectation, partially attributable, perhaps, to some of the topics to which allusion is about to be made.

It was anticipated that many of the causes tried at *nisi prius* at the sittings after Michaelmas Term must of necessity be brought immediately under the consideration of the courts; and in this respect there has been no disappointment; for remembering that the motions for new trials arising on circuit were disposed of during Michaelmas Term, and that applications of this nature could only arise out of trials that subsequently occurred, the number of motions for new trials has been unusually large; especially in the Court of Exchequer, where a greater number of applications of this description were made during the first week of Term than in the other courts taken conjointly.

It does not necessarily involve any disparaging reflection on those who now preside in our courts, or any unfavourable comparison between them and their most illustrious predecessors, when we state as the universal sentiment of the profession, as well as the growing feeling of the community, that trials at *nisi prius* are not, in general, either as regards their conduct or results, as satisfactory as they were in the days of Lord Mansfield or Lord Ellenborough, or even in more recent times. Various causes have combined to diminish the respect with which *nisi prius* decisions were formerly regarded.

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Restless and ignorant legislation has had no small share in producing this, as well as many other evil consequences. The statutory changes which each succeeding session of parliament brings with it have been so numerous and extensive that no degree of diligence can enable any human mind to keep pace with the course of legislation, much less to master its details. The inevitable result is, that instead of finding the judge who is to try a cause profoundly and accurately versed in the knowledge of the written law applicable to the case, it is by no means a matter of unusual occurrence to find a judge's attention called for the first time to the complicated provisions of an ill-digested and carelessly-drawn act of parliament, at the very moment he is bound judicially to declare his opinion and direct a jury with reference to the legal effect of its enactments. No one can be expected to have confidence in decisions given under such circumstances, and the wonder is, not that applications for new trials are often successfully made, but that in a still greater number of instances parties are not subjected to the expense of a second investigation before a jury.

Passing from this subject, on which much remains to be said, we may observe, that the Court of Exchequer, by refusing a rule for a new trial, have confirmed the ruling of the Lord Chief Baron in the case of *Wilson v. Lord Curzon*, adverted to in a former number,^a by which it was laid down, that the registered promoter of a railway company provisionally registered under the 7 & 8 Vict. c. 110, could not maintain an action for salary for services

^a Ante, page 170.

performed in the capacity of secretary, against the chairman of the managing committee by whom his appointment was signed. The grounds of this decision are not stated to be, that the plaintiff and defendant were partners or associated together with a common object, which indeed would have been utterly inconsistent with the judgment of this court in *Reynell v. Lewis*, and *Wright v. Hopkins*,^b but that the managing committee were the appointees and agents of the promoters, and could not therefore be personally liable to the latter for contracts made within the scope of their authority. This view of the case is deserving of further consideration, which may be more conveniently entered upon when the case is published in the recognised legal reports.

The confidence we expressed, that the Court of Exchequer would entertain the application for a new trial in the case of "*Goldicutt v. Beagin*," in such a manner as to avoid doing violence to the feelings of the profession and the public, was not ill-founded. The Lord Chief Baron explicitly admitted, that in publicly stating before the trial that he knew the defence, and that it would be insanity to enter upon it, although he had not meant to offer any opinion on the merits, he had been guilty of an indiscretion, and the court, with his avowed concurrence, granted a rule *nisi* for a new trial on this ground. We own we could have wished, that this result had been more speedily arrived at, and that less reluctance was manifested in conceding what could not have been withheld without outraging feelings, the maintenance of which is essential to the due administration of justice. The scene the Court of Exchequer presented on the day when the subject was discussed, was such as we hope never again to witness. It was in many respects indescribably painful, and to linger on the details would be to recall feelings the opposite to pleasurable. We shall dismiss the subject therefore with the remark, that the independency of the bar, individually and collectively, appears to have been honourably and creditably maintained throughout, and that whilst we desire the occasion may soon cease to be remembered, we trust the salutary lesson it has afforded will not be forgotten.

Recurring to more common-place topics, we may state, that the *nisi prius* sittings in term afford evidence of a gradual and

regular increase of the number of jury cases. At the first sitting in term for Middlesex, 71 causes were set down for trial in the Court of Queen's Bench; 41 in the Court of Common Pleas, and 94 in the Court of Exchequer.

In the courts of equity, although there has been less excitement and animation than in the courts of law, the term has produced enough to engage the attention of men in business, and to amuse the idle. The unusually large number of appeals recently brought to the Lord Chancellor's Court upon decrees and orders made by the Vice-Chancellor of England, and the Vice-Chancellors Knight Bruce and Wigram, and the result of those experiments, furnishes a subject for general discussion, and, as may be expected, affords scope for the expression of every variety of opinion.

The case of Mrs. North and her children, which involved the interesting and important question, whether the widow of a member of the Established Church, dying intestate, after she had become a convert to the Roman Catholic faith, could be allowed to superintend the education of her children without being called upon to give any assurance that she would not interfere to influence their religious belief, having been disposed of by Vice-Chancellor Knight Bruce, during the sittings after Michaelmas, in a manner unsatisfactory to Mrs. North, was brought before the Lord Chancellor by appeal, on the last day on which his lordship sat before the Christmas holidays. A temporary arrangement was then made by consent, with the understanding that the matter should be fully discussed on the earliest opportunity. On the first day of term, however, it was intimated by Mrs. North's counsel, that satisfactory arrangements had been made between the parties which would preclude the necessity of any interference on the part of the court. The question, however, may be said to be only in suspension, and there is little doubt that it will, at no very distant period, have to be fully discussed and definitively settled.

The appointment of judges, under the County Courts Act of last session, is a subject which, it may be believed, excites no inconsiderable degree of attention on both sides of Westminster Hall. It is understood that seventeen appointments have actually been made, and lists have been circulated containing the names of the fortunate candidates, including several silk gowns. As these appointments, however

well authenticated, have not yet been officially Gazetted, we shall best avoid the possibility of any inaccuracy by deferring the publication until after the official announcement. The list in circulation does not contain any of the appointments for the metropolitan districts.

LAW OF ATTORNEYS.

PRIVILEGE OF ARREST DURING ATTENDANCE AT THE COUNTY COURT.

A CASE was determined in the Practice Court of the Queen's Bench, in T. T. last, in which it appeared that an attorney of that court was arrested whilst practising in the County Court, and a question was raised, whether the party arrested was entitled to his discharge merely upon his showing that he had been admitted in the superior courts, without any affidavit or other proof that he had signed the roll, or been otherwise admitted to practise in the County Court.

It appeared, upon affidavit, that the defendant, who was duly admitted an attorney of the Court of Queen's Bench, in Michaelmas Term, 1830, and had since regularly taken out his certificate, was arrested upon a writ of *ex. sic.* whilst attending professionally the County Court of Gloucestershire in several causes tried there on that day.

Upon showing cause against a rule for the defendant's discharge from custody, it was contended, that under the 6 & 7 Vict. c. 73, s. 27, it ought to have appeared that the defendant had signed the roll of the County Court, to enable him to practise in that court, or entitle him to any privilege; whilst, in support of the rule, it was argued, that an attorney practising in any court is entitled to his privilege, and that an attorney of the superior courts is entitled as of right to practise in the County Court. It was also suggested that there is no roll in the County Court to sign; and that, as the defendant was a practising attorney of the Queen's Bench before the passing of the 6 & 7 Vict. c. 73, he was therefore within sect. 2 of that statute, which entitles an attorney to act who had been, previously to the passing of the act, admitted and inrolled.

Mr. Justice *Wightman*, after consideration, said, that without deciding the ques-

tion, whether or not it was necessary that an attorney practising in the County Court should sign the roll therein, he thought a *prima facie* case of privilege was made out on the affidavit, which called for an answer on the part of the plaintiff, who had failed to give any. The defendant was therefore entitled to his discharge, more especially as the privilege was for the benefit of the client, and not of the attorney. The rule for defendant's discharge was therefore made absolute.

NOTES ON EQUITY.

TRUSTEE.—DEVISE.

It has been the usual practice amongst conveyancers, in preparing the wills of persons who hold property for others, in trust, to include such trust property in the will, and vest it in the executors or trustees thereby appointed. This practice has not only been general, but it has been assumed to be beneficial to the parties for whom the trust was created. The trustee being selected on account of the confidence reposed in him personally by the settlor of the property, it may be assumed that he best discharges his duty by nominating a successor in whom he has equal confidence, instead of leaving the property to descend to his heir-at-law. He cannot be certain who that heir may be. He may be a very proper person, or he may be an infant, lunatic, or a person in a distant country; and unforeseen difficulties may arise, and much expense and inconvenience be sustained, in order to effect the objects of the trust, to the advantage of the persons beneficially interested.

It is true, that in some cases the settlor may not intend his executors, or the survivor of them, to possess this power, and if so, he should provide accordingly in terms not to be misunderstood. A recent case^d has occurred of this kind to which it will be useful to call the attention of our readers. The facts in substance were as follow:—

One William Hall, by his will, devised his estates to his son, William Hall, and to two other trustees upon trust, that they or the survivors or survivor of them, or the heirs of the survivor, should at their discretion sell the same, and he empowered them and their heirs to make contracts with and conveyances to the purchasers: and he directed that his executors,

^c *Clutterbuck v. Halls*, 15 Law J., Q. B. P. C.

^d *Cooke v. Crawford*, 13 Sim. 91.

their heirs, executors, administrators, and assigns should stand possessed of the money to be produced from the sale of his real and personal estate, upon the trusts therein mentioned. The trustee was appointed executor of the will. The testator's son alone proved the will. The others renounced the probate, and disclaimed the trusts of the will. The son continued in possession of the estate until his death in 1841. By his will he devised all the estates which were vested in him as a trustee, to the plaintiffs and their heirs, subject to the trusts affecting the same. The plaintiffs, in performance of the trust for sale in the will of Hall, the elder, agreed to sell part of the devised estate to the defendant. The defendant refused to complete the purchase, on the ground that the plaintiffs, as devisees under the will of Hall the younger, could not execute the trust for sale contained in the will of Hall the elder, and could not make a good title or give a good discharge for the purchase-money, without the concurrence of the *cestuis que trust* under the last-mentioned will. To a bill for a specific performance of the contract, a demurrer was put in by the purchaser.

The cases particularly bearing on the point are—*Townsend v. Wilson*, 1 Barn. & Ald. 108, 3 Madd. 261, in which it was decided that a power of sale given to three persons and their heirs, could not be exercised by two of them after the death of their co-trustee, although the purchase-money was directed to be paid to the three donees of the power, or the survivor or survivors of them, or the executors, administrators, or assigns of such survivor. And *Bradford v. Belfield*, 2 Sim. 264, where it was held that a trust for sale vested in A. and his heirs, could not be exercised by an assign of A.; notwithstanding assigns were mentioned in the receipt clause.

The *Vice-Chancellor*, in that part of his judgment which bears on the point we have referred to, said—

"That the testator had not used the word assigns either in the clause in which he created the trust for sale, or in either of the two clauses that followed it, in which he pointed out the machinery by which the sale was to be effected. He did not introduce that word until he began to speak of something that was to be done after the sale had taken place, that is, until he declared the trusts upon which the proceeds of the sale were to be held. Therefore, it was plain, that when William Hall, who by the disclaimer of the others, became the sole trustee, thought fit to devise the legal estate that was vested in him, he did an act which he was not authorized to do."

And here, said his *Honour*, "I must enter my protest against the proposition, which

was stated in the course of the argument, that it is a beneficial thing for a trustee to devise an estate which is vested in him in that character. My opinion is, that it is not beneficial to the testator's estate that he should be allowed to dispose of it to whomsoever he may think proper; nor is it lawful for him to make any disposition of it. He ought to permit it to descend; for, in so doing, he acts in accordance with the devise made to him. If he devises the estate, I am inclined to think that the court, if it were urged so to do, would order the costs of getting the legal estate out of the devisee, to be borne by the assets of the trustee."

In conclusion, his *Honour* observed:—

"That, as his decision in *Bradford v. Belfield* had been acquiesced in, the question raised by the demurrer in this case was concluded by that decision: but, if it was not, then the authority of *Townsend v. Wilson* was binding on the point. And his opinion was, that the plaintiffs, who might be properly called the assigns of Hall, the sole acting trustees of the testator's will, were not the persons to execute the trusts of that will: consequently, the demurrer was allowed."

We have drawn attention to this decision, bearing importantly on Conveyancing Practice; and it will be observed that the opinion of the court is expressed in no doubtful terms. His *Honour* "protests against the proposition, that it is a beneficial thing for a trustee to devise an estate vested in him in that character." "He ought to permit it to descend."

NOTICES OF NEW BOOKS.

A Treatise on the Stamp Laws in Great Britain and Ireland: being an Analytical Digest of the Statutes and Cases; with practical observations thereon: together, also, with a Table of Stamp Duties payable throughout the United Kingdom, &c. &c. By HUGH TILSLEY, Assistant Solicitor of Stamps and Taxes. London: Stevens & Norton. 1847. 1p. xxii. 892.

We think it highly to be commended that the officers discharging, or practically superintending the discharge of public duties should set forth the law and practice relating to their several departments for the use and information of the public and those who have to transact business in those departments. We therefore wel-

come this publication of Mr. Tilsley, the Assistant Solicitor of Stamps and Taxes.

The plan of the work is thus explained in the author's preface :—

“The enactments which relate to the present duties are to be sought for in the numerous Stamp Acts which have passed during a period of upwards of 150 years. To remedy the inconvenience attending this state of things, by collecting this scattered law, selecting from the various acts the clauses relating to the different subjects, and arranging them in chronological order, under distinct heads, with reference to the matters to which they respectively apply, thus, as it were, consolidating the provisions, was his original design; and when it was first proposed to offer the work to the public, the mode of its arrangement had long been determined on, considerable progress having been made in the undertaking; but a revision of the plan has since occupied much attention. The usefulness of the work to those for whom it is intended is, of course, the first object of the writer's care, and as a table of existing duties, for the purpose of constant and easy reference, was a material feature in its construction, it was resolved not to mar the usefulness of it by the interposition of other matter. The plan of juxtaposition may be said to be, in general, a favourite with the writer, by whom it is adopted in all practicable cases, where perspicuity can be attained by it, but the mode, for the most part, pursued by those learned gentlemen who have hitherto written upon the same subject, of placing the law applicable to particular articles of duty by way of note to the items in the schedule, although it cannot affect the value of it, inconveniently interferes with the text. It has, therefore, been deemed better to print the Tables of Duties without this incumbrance, so far as it was possible, and in accordance with the first intention of the writer, to set out the enactments relating to the several matters of charge under separate and distinct heads, arranged in alphabetical order, accompanied by the cases, and such observations thereon as appeared to him to be called for.”

“No difficulty has been experienced in carrying out this design, where the law exclusively, or peculiarly relates to particular duties; but as this is not the case throughout, a considerable portion of the law being, of course, applicable to nearly every item of duty, it has become necessary to include under the general head of ‘Instruments,’ embracing several subdivisions, many enactments, and other matters, which could not, with convenience, be made to range under any other title; and again, the title of ‘Stamps’ has been adopted for the purpose of including various matters of a general character, respecting which the same difficulty arose. The necessity for this course, however, will involve no inconvenience in seeking for any information that may be required on points to which such matters relate, as the index will readily furnish proper references to

the details contained in these general divisions.”

The introductory chapter relating to subjects of a general character connected with the stamp duties on instruments is particularly valuable, and few, if any, can give so much information as the present author on the practical rules of this branch of our Revenue Acts. The rule of construction of the Revenue and Penal Acts is thus stated :—

“It is a general rule that penal and revenue acts are to be construed strictly, a liberal interpretation being given to words of exception. That every charge upon the subject must be imposed by clear, unambiguous words, is a principle too frequently inculcated in modern times to be readily forgotten. With regard to stamp duties, in particular, the language of the statutes is to be carefully attended to. The law upon the subject of stamps, to use the words of a learned judge, is altogether *positivus juris*, it involves nothing of principle or of reason, but depends entirely upon the language of the legislature. The interpretation, however, ought to be dependent upon and have regard to the obvious meaning and intention of the legislature. In a case before the Court of Exchequer, sent by the Master of the Rolls for the opinion of the court upon a point of law depending wholly upon the construction of a stamp act, their lordships, in their judgment observed, that to give effect to the meaning of the legislature (by charging the duty in the particular instance) violence must be done to the language of the enactment; and it being a question by what construction the least violence could be effected, they expressed an opinion upon the case in accordance with their view upon the latter point. This decision was adopted by the Master of the Rolls (Lord Langdale) on the hearing of a petition disputing the propriety of it, and also by the House of Lords upon appeal.

“A more recent case before the Lord Chancellor in Ireland of *Cleland v. Ker*,^a upon a question under the Irish legacy duty acts, may also be referred to, in which his lordship appears to have taken a very great deal of trouble in order to arrive at a proper understanding of the meaning and intention of the legislature, and which was done only by altering the language in no less than three different acts, supplying words in two of them, and rejecting altogether from the other an important part of a sentence; thereby charging with duty property which would otherwise be exempt by the operation of the rejected words.”

The precise amount of the stamp duty was formerly necessary to be denoted, but not so since the 43 Geo. 3, c. 127. Mr. Tilsley observes that—

‘Formerly it was essential that an instru-

^a 6 Irish Law and Eq. Rep. 288.

ment should be impressed with the stamp or stamps strictly applicable to it, a stamp of too high a value was as objectionable as one of too little value; the reason being, that the duties were appropriated by the acts by which they were granted, to particular purposes; and if an improper stamp were used, the fund to which the instrument ought to have contributed was thereby deprived of that which belonged to it; but the reason ceased when all the stamp duties were made payable to one account. By the 43 Geo. 3, c. 127, s. 6, it was provided that a stamp exceeding the requisite value, should, if of the proper denomination required by law for the instrument, be valid and effectual. This was carried still further by the 55 Geo. 3, c. 184, by section 10 of which it was enacted, that all instruments for which stamps shall have been used of an improper denomination or rate of duty, but of sufficient value, shall be deemed valid and effectual, except where the stamps used shall have been specially appropriated to any other instrument, by having its name on the face thereof; so that an objection will not lie to an instrument, whatever date it may bear, that it is stamped with too high a duty, nor that the stamp upon it is of an improper denomination, unless such stamp bears upon it the name of another description of instrument. This remark must however be received with restriction. The Commissioners of Stamps and Taxes are at liberty to provide a die for any particular description of instrument, and if this be done, no other stamp will be available for such instrument; at present they have only provided, under this authority, stamps for bills of exchange, promissory notes and receipts; and for these instruments the stamps thus exclusively provided, must be used; but in other instances, although the commissioners may provide dies to denote stamps for particular instruments, yet any other unappropriated stamps may be used for them."

The rules of evidence are not affected by the Stamp Laws, and it is remarkable that an instrument need not be produced merely to show that it is duly stamped. Our author thus treats of this point:—

"In the case of *Huddleston v. Briscoe*,^b Lord Eldon, went very fully into the question whether, where a contract is stated upon the pleadings, so as to render it unnecessary to be produced for the purpose of evidence, the court ought, upon suggestion made, to require it to be produced in order to see whether or not it is stamped, and expressed his decided opinion that the court was not under the necessity of inquiring whether the agreement was stamped or not, unless the record was so framed as to compel the plaintiff to produce it. His lordship also observed, that in a Chancery suit the bill was not, in any correct sense, evidence, but was read as part of the answer, and that the

answer was not, in the sense of the act, evidence, but was read as admission dispensing with the necessity for evidence.

"In *Israel v. Benjamin*,^c which was an action against the acceptor of a bill of exchange for 50*l.*, payable two months after date, with interest, Lord *Ellenborough* held, that the defendant, by reason of his having paid money into court, thereby admitting the validity of the instrument, was precluded from taking any objection to the stamp; and the court on a motion for a new trial were of the same opinion. The objection offered was, that the bill was stamped for the principal sum only, and not for interest. At the trial Lord *Ellenborough* thought the stamp sufficient: the court gave no opinion upon the point. It has however since been settled that no stamp is required for the interest. See *Preussing v. Ing*," 4 B. & A. 204.

Mr. Tilsley has set out the acts relating to attorneys which in many respects bear on the Stamp Laws, and has devoted considerable space to the decisions upon them. Amongst others, he raises a point of considerable importance which has not yet been decided by any of the courts, namely, that if an attorney should be off the Roll, under the 37 G. 3, c. 90, s. 31, by reason of his having omitted to obtain his certificate for one year previously to the 6 & 7 Vict. c. 73, he must be re-admitted in the usual manner; and Mr. Tilsley considers that an order to the registrar to grant a certificate under the latter act is not sufficient. Now though the repeal of former acts, or parts of acts, in the 1st section of the 6 & 7 Vict. c. 73, saves any matters or things done before the passing of the act, and under the 37 Geo. 3, c. 90, s. 31, the admission of a person who had neglected to take out his certificate for a year was declared null and void. Yet the attorney's name remained on the Roll; and the question for the court would be, whether the new act which repealed this clause of the Stamp Act and substituted another mode of proceeding, did not render re-admission unnecessary, and restore the attorney to his legal position on the Roll, which, in point of fact, he really retained. Although his neglect or omission to take out a certificate would deprive him of the right to recover his costs for "matters or things done before the passing of the act," yet the section by which his admission was rendered void being now repealed, and his admission and enrolment remaining, it cannot strictly be said that the nullity was an act done before the passing of the new statute. The pro-

^b 11 Ves. 583.

^c 3 Camp. 40.

vision for obtaining an order to renew the certificate, instead of an order to readmit, under which any arrear of duty would be imposed, (which was the purpose of the former enactment,) shows the intention of the legislature to establish a new practice, both convenient in itself, and in accordance with the actual enrolment which still continued. Had the name been really struck off for non-payment of the duty, it must have been restored before the Registrar of Attorneys could certify that the applicant was enrolled.

There are several other important points to which Mr. Tilsley has called attention, some of which are not usually found in the books of practice. We may advert to these hereafter, and in the meantime recommend the volume as one of great practical utility to all branches of the profession.

LORD CAMPBELL'S CONTINUATION OF THE CHANCELLORS.

THESE two volumes are better than their precursors. They are more entertaining, and we will add, more instructive. The truth is, what is nearer our own time must always be more interesting than what is remote. Middleton's life of Cicero, though good in its way, gives us but feeble pleasure, compared with the delight with which we again and again peruse the faithful "Jamie Boswell." Even the life of Lord Bacon, rich as it was in materials for biography, excites far less curiosity than that of Dr. Johnson; and supposing another Scot had registered his talk, (for by all contemporary accounts he was superb in conversation,) the distance of time interposed between us and the illustrious Chancellor of the 17th century, our ignorance of the characters with whom he associated, and want of sympathy in many of the subjects upon which he discoursed, would make his *colloquiana* come but tamely off in our regard; just as, in all probability, the life of Sir Walter Scott, by Mr. Lockhart, delightful as it is in our day, will have lost much of its savour two centuries hereafter. The charm of biography is dependent in a great degree on the nearness of the subject; and this is the reason why, although the most delightful, it is not the most valuable department of literature.

The narrative of Lord Campbell, however, is perpetually interspersed with reflections which flow naturally from his

subject, but which could only occur to a man long conversant with the world, with public life, and with all the *arcana* of his profession. He is an English lawyer throughout, but not blind to the defects of that character. On the contrary, he takes every opportunity to denounce the existing system of legal education pursued in the four Inns of Court. The life of Lord Hardwicke is a glass from which the student who aspires to be chancellor, and to die a millionaire, should dress. He was the son of a Dover attorney—one apparently of no great note. When about 14 he was transferred to the metropolis, where, in the office of Mr. Salkeld, an eminent solicitor, he applied himself to business with great assiduity, and what was still more deserving of attention, he employed every leisure moment in endeavouring to correct the effects of a scanty education. He was entered a student of the Middle Temple, on the 29th Nov., 1708. By Mr. Salkeld he was afterwards recommended to Chief Justice *Parker*, as tutor for his sons. This circumstance was the foundation of all his greatness; for the Chief Justice (who was subsequently raised to the Chancellorship under the title of Lord Macclesfield,) became his patron, and showed an excessive partiality to him, which, aided by his own great abilities, procured him large practice almost immediately after his call to the bar. His unparalleled success, as might naturally be expected, gave great offence to his seniors, one of whom, Serjeant Pengelly, in particular was so disgusted at hearing the Chancellor observe—"What Mr. Yorke said has not been answered," that he one day threw up his brief, saying in a loud voice, "I will no more attend a court where I find Mr. Yorke is not to be answered."

In the year 1733 Yorkewas created Chief Justice of the King's Bench, and raised to the peerage with the title of Lord Hardwicke. After presiding in that court for about three years, he was, on the death of Lord Talbot, appointed successor of that great judge as Chancellor. And now commenced the course of preparation which we are told by Lord Campbell he imposed upon himself, in order to attain that consummate perfection as a judge which he exhibited, as well in the Court of Chancery as in the House of Lords. The passage which we now quote is deserving of all regard, and ought to be engraven on the heart of the juvenile aspirant.

"The student, animated by a generous ambition, will be eager to know whence this great excellence arose? Like everything else that is valuable—it was the result of earnest and persevering labour. A complete knowledge of the common law was the foundation on which he built. This he gained not only by reading, but by circuit experience, by continuing frequently to plead causes in the King's Bench and Exchequer while he was Attorney-General, and by presiding above three years in a common law court. Having been initiated in Chancery practice during his clerkship with Mr. Salkeld, he had read attentively everything to be found in the books connected with equity, and he had actually been a regular practitioner in Chancery during the whole of the Chancellorships of Lord Maclesfield and Lord King. He now revived his recollection of that learning by again going over the whole of it as if it had been new to him; and he obtained M.S. notes of such of Lord Talbot's decisions as were of any importance; so that in all branches of professional information he was equal, and in many superior to the most eminent counsel who were to plead before him. But that to which I mainly ascribe the brilliancy of the career on which he was entering, was the familiar knowledge he acquired of the Roman civil law. The taste for this study he is said to have contracted from the necessity of preparing himself first to argue as an advocate, and then to decide as a judge, appeals to the House of Lords from the Court of Session in Scotland. In that country he found the Roman civil law regulating the enjoyment and succession of personal property, and even frequently alluded to by way of illustration in questions respecting entails. Like most English lawyers, in preparing for the bar, he had hardly paid the slightest attention to it. While Attorney-General he was retained in many Scotch appeals, and for the occasion he was obliged to dip into the Pandects and into the commentaries upon them; but although he had the discernment to discover the merit of these admirable compilations, it was not indispensably necessary for the discharge of his duty that he should examine them systematically, and his time was filled up with more urgent occupations. Now that he was to sit in the House of Lords as sole judge to decide all appeals from Scotland, he saw the necessity of making himself a profound Scotch lawyer, and he found that this was impossible without being a good civilian. Therefore, having gone through Mackenzie, Pankten, and Stair, he regularly proceeded to the *Corpus Juris Civilis*, with Vinnius, Voet, and other commentators, and his mind was thoroughly imbued with the truly equitable maxims of this noble jurisprudence. I delight in recording how his unrivalled eminence as an equity judge was achieved—lest the aspiring but careless student should think it could be reached by natural genius and occasional exertion."

"He took special delight in 'Dirleton's Doubts,' saying, 'his doubts are more valuable than other people's certainties.'"

NEW RULE OF THE COMMON LAW COURTS APPOINTING EXAMINERS.

Hilary Term, 1847.

IT IS ORDERED, That the several Masters for the time being of the Court of Queen's Bench, Common Pleas, and Exchequer, respectively, together with Samuel Amory, Benjamin Austen, Michael Clayton, John Coverdale, William Loxham Farrer, Alexander William Grant, John Swarbreck Gregory, Richard Harrison, Bryan Holme, Germaine Lavie, Robert Wheatley Lumley, Charles Ranken, Charles Shadwell, William Tooke, Richard White, and Edward Archer Wilde, gentlemen, attorneys, be and the same are hereby appointed examiners for the present year, to examine all such persons as shall desire to be admitted attorneys of all or either of the said courts, and that any five of the said examiners (one of them being one of the said masters) shall be competent to conduct the said examination, in pursuance of and subject to the provisions of the rule of all the courts made in this behalf in Easter Term, 1846.

[The rule of Easter Term, 1846, authorized the annual appointment of sixteen examiners in addition to the masters. Formerly twelve only were appointed, and consequently in the 4th Term four of the examiners had to serve a second time. In Chancery, where the candidates rarely apply to be examined, twelve is of course a sufficient number. Along with the common law examination, an efficient examination in equity takes place.—Ed.]

MANCHESTER LAW ASSOCIATION.

ANNUAL REPORT.

THE annual meeting of the above association was held at the society's rooms, No. 4, Norfolk Street, on Wednesday last, when Mr. John Owen was elected president; Mr. John Barlow, of Manchester, and Mr. Beaumont, of Warrington, were elected vice-presidents; and Mr. R. M. Whitlow, treasurer. Mr. Thomas Taylor, 28, Princess Street, was re-elected honorary secretary. The accounts for the past year were passed, and the following, being the eighth annual report, was presented by the committee, and unanimously received and adopted:—

The committee have pleasure in laying before the members generally, a short report of the proceedings during the past year.

They are glad that they are enabled to state that the society still continues to increase; ten new members have enrolled their names since the date of the last report, and there is one candidate for admission at the next ballot. The committee beg to observe that the number of members, with the present confined district, can hardly be expected to increase to any great extent; it is a matter, however, worthy of serious consideration, whether the limits of the

society should not be further extended, so as to afford to the profession, practising beyond 20 miles, the numerous and important advantages of membership. To this subject they invite the serious attention of their successors in office, deeply feeling the importance of encouraging, by every possible means, a union amongst the profession, and being fully convinced that by the aid of societies like the present alone can such union exist.

During the past year, many of the members have availed themselves of the privilege of having disputed points of practice settled by your committee, and several cases have been submitted to the same tribunal from societies in distant towns.

A constant communication has been kept up with the metropolitan society with reference to the admission of articulated clerks and parties applying for renewed certificates, and your committee have furnished to that society all the information they could obtain, so as to enable them to form a correct judgment as to the character of the various applicants. The correspondence has also had reference to several questions interesting to the profession generally.

During the last winter, your committee were again enabled, by the kindness of some of the members, to afford to the articulated clerks the advantage of gratuitous lectures on certain branches of the law, an advantage which has not only been gratefully acknowledged by them, but has called forth the warm praise of a committee of the House of Commons. Several gentlemen have again kindly promised their services, and arrangements have been made for another course during the ensuing spring. Your committee cannot allow this subject to pass without conveying to R. Hilditch, Esquire, their best thanks for his valuable assistance in furtherance of this object.

No question of any very great importance to the profession, or requiring the active interference of your committee, has been proceeded with during the last session of parliament, but several most important measures were introduced, which received careful and anxious consideration.

A petition was prepared against Lord Campbell's Registry Bill, which was signed by 142 solicitors practising in Manchester, and an active and powerful opposition to the measure, as it then stood, was ready to be called into action, had it been necessary. To this question, so deeply affecting the interests of the profession and the public, and which will doubtless be shortly again brought forward, your committee solicit the anxious attention of their successors. The bill for the amendment of the law of bankruptcy received the attention its importance demanded, and your committee were prepared with many material alterations and suggestions, in order to perfect, as much as in them lay, a law which is now so universally admitted to be inefficient. This question of such vital interest to the commercial interests, will be introduced early in the session and will, doubtless, receive the most careful consideration.

The Small Debts' Bill is the only other measure to which it is necessary to allude. The bill was referred to a sub-committee, who duly made their report. It was thought advisable to call the attention of the municipal authorities to some of the provisions, but it was not deemed necessary that this association should offer any opposition to the passing of the measure, and which has now become the law of the land.

Although during the past session no measure of any great importance to, or deeply affecting one branch of the profession, has been passed, yet your committee regret being obliged to state, that on no former occasion has the profession of an attorney been subjected to such sweeping injustice.

An attorney has been held up by members of both branches of the legislature as not having the capability to fill offices of certainly no great importance, or requiring any extraordinary legal knowledge or research, offices most certainly of minor importance compared with many that attorneys have hitherto been accustomed to fill with honour to themselves and advantage to the public. In no former session has what might almost appear hostility and a legislative warfare against our branch of the profession, been so prominently and so openly declared; and it behoves us now, in self-defence, to avail ourselves of every legitimate means of repelling the unjust aggressions which are continually made upon our fair and honest claims and privileges.

By union among ourselves alone can we hope to repel those aggressions, and your committee refer with pleasure to the general feeling that now prevails on this subject, and to the cordiality subsisting between the profession in this and the neighbouring towns, a cordiality engendered and fostered by associations like the present, a cordiality which not only materially facilitates the transaction of business, but which will prove our best defence at a period when all our conjoint efforts are required. It is to the want of such a union in times gone by, to the want of the character and claims of our branch of the profession being fairly represented in parliament and upheld by the public press, that so many abortive attempts at legislation, falsely styled improvements in the law, and whose only aim and end appears to be to injure the attorney without benefiting the public, now encumber the statute book: and it is by the aid of a cordial union among ourselves alone that we can hope to prevent the high, the honourable, the important profession of an attorney sinking irretrievably in caste, and becoming no longer a pursuit, which can be consistently embraced or followed by men of education, standing, or character.

PROVINCIAL LAW SOCIETIES' ASSOCIATION.

THE annual general meeting of the members of the Provincial Law Societies' Association was held on Wednesday, the 13th day of

January instant, at their rooms, No. 4, Norfolk Street, Manchester, when an account of the receipts and disbursements (previously audited) was submitted and passed. The proceedings of the society for the last year were stated in the following report, which was read by the honorary secretary and unanimously adopted. Mr. Thomas Eyre Lee, of Birmingham, was elected president; Mr. John Hope Shaw, of Leeds, and Mr. James Crossley of Manchester, were elected Vice-Presidents; Mr. R. M. Whitlow, was re-elected Treasurer, and Mr. Thomas Taylor, Honorary Secretary, for the ensuing year.

Second Annual Report.

The committee, at the expiration of this the second year of the existence of the association, have pleasure in presenting a report of their proceedings during the year that has passed, and in doing so they feel much satisfaction in stating that the utility and importance of an union between the several law societies in the kingdom to promote the various objects for which the association was established have since their last annual meeting become most apparent.

Your committee had their attention directed to a bill introduced into the House of Lords by Lord Campbell, early in the last session of parliament, for the establishment in the metropolis of a General Public Registry of Deeds and Instruments affecting real property. To this measure, after a mature consideration of its provisions, they felt it their duty to be prepared to offer a decided opposition, and a petition fully detailing their grounds of objection was accordingly forwarded to a noble peer for presentation. In this step they were seconded by several other societies and individual practitioners in the country, whose attention to the objects and evils of the measure had been aroused through the instrumentality of your committee. They are happy, however, in being enabled to report that the withdrawal of the bill by the noble lord who had introduced it, rendered further opposition unnecessary.

Your committee entered upon a consideration of two other bills, the one "to facilitate the Conveyance of Property," the other "to amend the Laws relating to Bankruptcy and Insolvency," which had been severally introduced into the Houses of Lords and Commons; but as these measures were also subsequently withdrawn, further attention to their provisions became unnecessary.

To another bill having for its object the establishment of Local Courts for the more easy recovery of Small Debts, and which ultimately received the sanction of parliament, your committee offered no opposition. The opinion of several of the societies forming the association, as well as that of individual practitioners, coincided with their own in considering it to be a measure calculated, on the whole, to provide for the very desirable object its framers had in view; they were, nevertheless, not insensible to the injustice done to the branch of

the profession to which they belong, by their exclusion under its provisions from offices to which it was felt they were fully entitled to aspire.

Your committee, in adverting to this injustice, aggravated as it was by sentiments expressed within the walls of parliament and by the public press during the discussion of the measure, feel that they would not adequately fulfil their duty were they not earnestly to direct the attention of the association to those acts of aggression and attempts at depreciation. It cannot be denied, that while it is essential to the public that a character for honour and integrity on the part of the profession, through whose instrumentality their rights and interests are to be asserted and maintained, it is not unimportant that the profession should, as a body, uphold and defend that character when attempts are made in high quarters unjustly to assail and injure it,—such attempts your committee consider were made during the last session of parliament: and they have much satisfaction in announcing, that communications received from various societies in the kingdom in connexion with the association, evidence a strong and general feeling of their injustice, and that a negotiation is pending with a view to the formation of an union between metropolitan and provincial practitioners on a comprehensive scale, for the purpose (amongst other objects of much importance) of asserting and maintaining the true position of the branch of the profession to which we belong, and of securing the means of adequate defence against attacks such as those to which your committee have alluded. It is with much gratification they learn that a conviction of the importance and necessity of such an union is now very generally felt, and they urgently recommend to their successors in office a steady pursuit in their endeavours to effect its accomplishment.

Your committee, in conclusion, have the pleasure of stating, that the amount of subscriptions in their banker's hands, including interest, amount to 197*l.* 14*s.* 11*d.*, of which there has been expended 89*l.* 6*s.* 8*d.*, thus leaving a balance of 108*l.* 8*s.* 3*d.* (exclusive of the present year's subscriptions) to provide for the expenditure of the association during the forthcoming year.

QUESTIONS AT THE EXAMINATION.

Hilary Term, 1847.

I. PRELIMINARY.

Where, and with whom did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books which you have read and studied.

Have you attended any and what law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

What are the usual facts and circumstances, and how made out, to obtain a judge's order to issue a *capias* to arrest a defendant and to hold him to special bail?

Where a defendant has been arrested and he cannot procure special bail, has he any, and what other means of obtaining his discharge without going to prison?

What is the difference between slander and libel? and what is the form of action in each?

In actions for damages in trespass, or on the case, where the sum recovered by the verdict of a jury shall not amount to 40s., is the plaintiff entitled to costs as of course? If he is not so entitled, is he deprived of them by any and what particular statute?

Supposing a plaintiff not entitled to costs where the damages recovered by verdict do not amount to 40s., in the forms of action stated in the last preceding question, is there any and what application necessary so as to entitle a plaintiff to the costs of suit; and how, to whom, and when should such application be made?

Will an action for debt lie upon a deed of covenant under seal for the payment of a sum of money certain with interest?

State some of the principal advantages of the action in debt over an action in *assumpsit* or on promises, where a defendant does not plead.

Where a plaintiff has obtained a judgment against a defendant in the character of executor or administrator in respect of future assets when they may come to such defendant's hands, and such assets afterwards come to his hands, what steps should the plaintiff take in order to make such assets available to satisfy the judgment?

Where a plaintiff or defendant obtains a rule for a special jury, and the party obtaining the rule and procuring the special jury succeeds at the trial, but omits to obtain the judge's certificate that it was a cause proper to be tried by a special jury, what effect would the want of such certificate have as to allowing the costs of the special jury in taxing the general costs of the cause?

State the evidence necessary to support an action brought by a plaintiff who sues as indorsee against the drawer of a bill of exchange, where every thing is put in issue and required to be proved by the defendant's plea.

Where an attesting witness to a deed or other written instrument is dead, what is the ordinary evidence necessary to prove the execution of such deed or instrument?

Where a plaintiff wishes to recover a debt contracted by a woman before her marriage, but who has since married before any action brought, who is or are the proper party or parties to be made defendant or defendants?

Where a cause has been taken to trial, so as to prevent a defendant from moving for judgment, as in the case of a nonsuit, what other steps can the defendant take, in order to make an end of the cause?

Where a juror is withdrawn by consent, without any terms as to costs, how are the costs disposed of?

Where a new trial is granted, and no directions given as to costs, and the same party succeeds on the second trial, in taxing the general costs of the cause, what is to be done in respect of the costs of the first trial, and of the application for a new trial? Is there any rule of court upon this subject, if there is, state it, or the effect of it?

III. EQUITY AND PRACTICE OF THE COURTS.

What proofs are required by courts of equity by a party who seeks the specific performance of a contract which is disputed?

In what cases will courts of equity interfere to carry into effect the contracts of infants, married women, and lunatics?

What is the usual mode of creating an equitable mortgage? and in what cases is notice essential to give effect to it?

In what cases will a receiver be appointed by the Court of Chancery?

Are trustees in all, or what cases, entitled to their costs in equity?

What is the rule of courts of equity with regard to decreeing specific performance where inadequacy of consideration is shown?

What acts are considered in the light of part performance so as to take a case out of the Statute of Frauds, to enable a party to call for specific performance of an agreement, although there may be no memorandum in writing?

For what purpose is a bill of discovery filed? and has any and what alteration been made in the practice with respect to reading the answer to a cross bill for discovery?

Within what time after filing a demurrer to a bill must the same be set down for argument? and by whom; and is there any, and what difference if the demurrer is to the whole or to a part of the bill?

If a bill is filed to stay proceedings at law, and an injunction granted which is afterwards dissolved upon the defendant's answer, can a plaintiff amend his bill, and again apply for an injunction?

If a person is made a party to a bill, but has not been served with a subpoena to appear and answer, is he in any case bound by the proceedings in the suit?

What is the present form in which all affidavits should be made? and what is the consequence if such form is not observed?

How, by whom, and on what terms may the time for answering be enlarged after the usual time has expired?

How can the plaintiff procure the appointment of a guardian for an infant defendant, or for a person of unsound mind?

How are parties to be served with a subpoena when out of the jurisdiction of the court?

IV. CONVEYANCING.

How may an estate in joint tenancy be created, and how severed?

An advowson is mortgaged in fee—the incumbent dies; who has a right to present, the mortgagor or mortgagee? Give the reason why the right of presentation is in the one or the other.

What is a freebench? and how does it arise?—State an example.

A. dies leaving two grand-daughters, the issue of a deceased daughter; a grandson, the issue of another deceased daughter; and two daughters; to whom will his fee simple estates descend?

By what deeds or assurances are fee simple estates, copyhold estates, and estates held for a term of years, respectively conveyed?

Is the widow of a tenant in tail, who died without issue, entitled to dower? Would the widow's right, if any, be affected, and how, if her deceased husband had been tenant in tail after possibility of issue extinct?

A fee simple estate is conveyed to such uses as A. shall appoint; A. in execution of his power, appoints B. and his heirs, to the use of C. and his heirs, in trust for D. and his heirs; in whom is the legal estate?

Is any and what formality necessary to the completion of a feoffment and bargain and sale respectively, after they have been signed by the feoffor and bargainor?

Settlement of fee simple estates to the use of A. for life,—remainder to the use of B. and his heirs, in trust for C. and his heirs.—Do B. and C. respectively take legal or equitable estates? and to whom must A. surrender his life estate, in order to its merger.

What is an equity of redemption? and is the party entitled to it, ever and when barred?—Give a familiar example.

What is the meaning of the term emblements?

Are there any and what points essential to be attended to on the examination of an abstract of title with the deeds?

What are the covenants for title, usually inserted in a conveyance of a fee simple estate?

Are there any, and what legal or equitable means of binding the real property of an infant, on his or her marriage, so as to insure a settlement being made on his or her attaining twenty-one?

For how many years has a purchaser of a fee simple estate a right to require the vendor to show a title, and on what principle is the vendor bound to show a title for the time to be stated in your answer to the first part of this interrogatory?

V. BANKRUPTCY AND PRACTICE OF THE COURTS.

What are the several requisites to support a valid fiat in bankruptcy?

What are the amounts of debt required for one or for more than one petitioning creditor or petitioning creditors for a fiat? and have there been any, and what recent alterations in the law in that respect?

State the law as to the petitioning creditor's debt being contracted before or after the commission of the act of bankruptcy.

Do assignees require any, and if any, what authority before the institution of a suit in equity?

Can a creditor, having the bankrupt in custody, prove for the same debt? or is there any, and what act to done by him in reference thereto?

What is the course of proceeding to be taken by a creditor holding a mortgage as collateral security for his debt, in order that he may, if the proceeds fall short, prove for the deficiency?

Is there any, and what difference in the course of proceedings to be taken by a creditor having a legal mortgage, and by one having a deposit of deeds constituting an equitable mortgage only?

Is there any and what appeal, to whom and how prosecuted, from the decision of a commissioner in bankruptcy?

From what debts and demands generally is a bankrupt discharged by his certificate?

Can an insolvent trader take any, and what steps to make himself bankrupt? and if he can, will a certificate obtained in pursuance thereof be effectual for his future discharge?

Are there any and what steps to be taken by assignees of a bankrupt, to prevent them becoming personally responsible for the rent of premises held by him?

In actions by or against assignees of bankrupts, are there any and what steps to be taken to enable the opposing parties to dispute the validity of the fiat?

What are the consequences of the taking or omitting to take such steps?

Is it required by law that an assignee of a bankrupt should be a creditor?

What are the steps, if any, to be taken in cases of assignment by traders of all their estates for the benefit of their creditors, in order to such traders being protected from the operation of the bankrupt laws?

VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

Is it necessary in every method of prosecuting misdemeanours, that before the party is put on his trial before a petty jury, a bill should be filed by a grand jury? and if not, what misdemeanours may be prosecuted without the finding of a grand jury, and in what way?

What is the nature of a criminal information? and in what way or ways must it originate?

State what, if any, are the conditions which the Court of Queen's Bench requires before granting a rule in a criminal information at the instance of a private prosecutor.

State some of the instances in which criminal informations are usually applied for.

State what you conceive to be the advantage to a client in advising him to adopt this course of proceeding in preference to an indictment or action at law in the ordinary course.

Before what courts of criminal jurisdiction are indictments tried on the finding of grand juries?

Of what description are the commissions

which give power to judges of assize to try criminals?

Do the magistrates in their sessions of the peace act under the same commission as judges? or under any and if any, and what other description of commission?

State the practical difference between the powers of judges and of the magistrates in trying prisoners.

State some of the crimes for which persons are not liable to be tried at quarter sessions.

May all misdemeanours be tried at quarter sessions? and if not, state what cases are excepted.

State at what period the last general act of parliament for the regulation of trials at sessions was passed.

State some of the cases in which a single magistrate has jurisdiction.

State some of the cases in which two magistrates have jurisdiction.

State what is the general nature of business transacted at petty sessions.

FURTHER LIST OF ATTORNEYS' ADMISSION.

To be admitted on the last Day of Hilary Term, 1847.

PURSUANT TO JUDGES' ORDER.

Queen's Bench.

Patrick, Charles, 29, Wilmington Square, Soley Terrace; articulated to Robert Aiskell Davison, Bishop Wearmouth.

Winfred, William, 31, Elysium Row, Fulham; Hart Street; articulated to Charles Addis, 10, Great Queen Street.

RENEWAL OF CERTIFICATES.

To be added to the List of Notices of Application on the Last day of Hilary Term, to take out Certificates.

PURSUANT TO JUDGES' ORDER.

Du Cane, Richard, Southampton Buildings, Chancery Lane.

Hayes, James, Preston, Lancashire; C. P., at Lancaster.

To be added to the List of Notices of Application to a Judge at Chambers on 2nd February, to take out Certificate.

PURSUANT TO JUDGES' ORDER.

Rowland, William Henry, 41, Frederick St., Grays Inn Road.

Wood, William, 10, Symond's Inn.

ADMISSION OF SOLICITORS.

Secretary's Office, Rolls, Jan. 20, 1847.

THE Master of the Rolls has appointed Friday, Jan. 29th, at the Roll's Court, Chancery Lane, at a quarter past three in the afternoon, for swearing in solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Thursday, 28th January.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRACTICE.

ABATEMENT.

See Dismissal.

AFFIDAVIT.

1. *Motion*.—If a plaintiff gives notice of his intention to read an affidavit on the hearing of a motion, but declines to do so, the defendant is, nevertheless, entitled to read it. *Cauty v. Handitch*, 14 Sim. 75.

2. *Long Vacation*.—In the long vacation, when a matter presses, the court will sometimes take the original affidavits into custody, and act on them as if they had been filed; but when the court is sitting, office copies alone can be used. *Attorney-General v. Lewis*, 8 Beav. 179.

3. *Affidavit*.—*Four day order*.—An affidavit in support of a motion for the four day order to enforce payment of a sum, ordered by a previous order to be paid, must state that there has been no payment up to the day when the motion is made. *Re Nias*, 33 L. O. 69.

AMENDMENT.

1. *Solicitor's affidavit*.—All application for leave to amend under the 63th Order of May, 1845, are to be made in the first instance to the Master.

When the general orders require an affidavit of the solicitor, an affidavit of the solicitor's clerk is not sufficient; but in cases where the facts to be deposed to are within the personal knowledge of the clerk only, the court may require an affidavit from both. *Christ's Hospital v. Granger*, 1 Phill. 634.

2. *Taking bill off the file*.—On the allowance of demurrers put in by three of the defendants, the plaintiff had leave to amend his bill on paying each of them 20s. costs. The order to amend was served upon a fourth defendant, but not until he had filed his answer, and he moved to take the amended bill off the file, for irregularity.

Motion refused; because the order to amend remained undischarged. *Deeks v. Stanhope*, 14 Sim. 200.

3. *Exceptions*.—Exceptions being allowed, the plaintiff obtained an order to amend, and that the defendants might answer the exceptions and amendments together. Before this order had been served, the defendants put in a further answer: *Held*, regular, and the order was discharged. *Hemming v. Dingwall*, 8 Beav. 102.

4. Order of course to amend, obtained one

day too late, discharged. *Harrod v. Gibson*, 8 Beav. 90.

5. *Construction of Order 16, art. 33, and Order 66 of May, 1845.*—Where a bill has been amended under the above orders, it cannot be further amended even by adding parties, without a special order for the purpose. *Clare v. Clare*, 32 L. O. 420.

And see *Injunction: Master's Jurisdiction*.

APPEAL.

An appeal will lie from an order for the cause to stand over to enable the plaintiff to amend his bill by adding parties. *Davis v. Chanter*, 33 L. O. 163.

1. *Construction of Order 31 of May, 1845.*—The court will not order an appearance to be entered for a defendant who cannot be served with a subpoena, in consequence of his occupation being of such a nature that he has no fixed place of residence, unless it can be shown that there is reason to believe he is endeavouring to evade service of the subpoena. *Nicholas v. Nicholas*, 32 L. O. 448.

2. *New orders.*—A defendant having filed a bill for the same purpose as the plaintiff's, and declining to abandon it, was refused leave to enter an appearance under the 16th Order of May, 1845, art. 5, after the expiration of the twelve days thereby allowed. *Rigby v. Strangways*, 33 L. O. 138.

ATTACHMENT.

1. A plaintiff, though he has joined in a commission to take an answer, may issue an attachment for want of answer before the return of the commission.

The old practice does not authorize a party prosecuting a contempt to make out process into a county, in which it is known the party prosecuted is not.

According to the old practice, an attachment returnable immediately could not be issued without a previous order.

A plaintiff, without order, sued out a writ of attachment against a defendant resident at Gibraltar, returnable immediately, and directed to the sheriff of London; it was discharged for irregularity. *Boschetti v. Power*, 8 Beav. 180.

2. *Irregularity.*—It is no objection to the irregularity of a writ of attachment, that another similar writ has previously issued against the same party, but which has not been acted on. *Andrews v. Walton*, 1 Phil. 619.

3. *Error in Master's office.*—An attachment will not issue against a party acting under an order of the Master, and which by mistake extended beyond the time mentioned by the party. *Chuck v. Cremer*, 33 L. O. 112.

And see *Contempt*.

COMMISSIONER.

Fees.—Commissioners for the examination of witnesses restrained from prosecuting an action at law for the recovery of their fees, and a reference made to the Master to ascertain

what was due to them. *Ambrose v. Duamow Union*, 8 Beav. 43.

Case cited in the judgment: *Weaver, ex parte*, 2 Myl. & Cr. 441.

See *Interrogatories*.

CONSENT OF COUNSEL.

Parties are bound by the consent of their counsel; consequently, a petition to restore a petition dismissed by consent, upon the ground that no authority had been given to counsel to consent, was dismissed with costs. *Hobler in re*, 8 Beav. 101.

CONTEMPT.

1. *Pauper.*—*Semble*, a party who is in contempt for non-payment of costs in the suit, is not thereby prevented from moving for leave to defend it *in forma pauperis*. *Oldfield v. Cobbett*, 1 Phill. 613.

2. *Adjudication.*—An order of commitment ought, in strictness, to be prefaced by an express adjudication that the act complained of is a contempt; but the absence of such adjudication is not a ground for discharging such an order for irregularity. *Van Sandau, ex parte*, 1 Phill. 605.

Cases cited in the judgment: *In re the Printer of the St. James' Evening Post*, 2 Atk. 469; *In re Mr. Lechmere Charlton*, 2 Myl. & Cr. 716; *Priestly v. Lamb*, 6 Ves. 421.

DECREE.

See *Mistake*.

CROSS MOTIONS.

Right to begin.—A motion to dissolve an injunction should be disposed of before a motion to extend the injunction is heard, although the notice of the latter motion should have been first given. *Brainton v. London and North Western Railway Company*, 33 L. O. 235.

DECREE.

Vacating inrolment of.—Inrolment of a decree will not be vacated upon the grounds of having been signed and entered with undue haste. *De Beauvoir v. De Beauvoir*, 33 L. O. 209.

DEMURRER.

1. *Indulgence.*—Motion, by plaintiff, to set down a demurrer for argument, after the time allowed for that purpose had expired, on the ground that the neglect had arisen from the pecuniary embarrassments of the plaintiff's solicitor, (which it appeared the plaintiff was previously aware of,) refused. *Knight v. Majoribanks*, 14 Sim. 198.

2. *Exceptions.*—*Construction of Order 38 of August, 1841.*—If a general demurrer will lie to a bill, a defendant may, under the 38th Order of August, 1841, decline answering such portions of the bill as he objects to answer, although he may have answered the remainder. *Mason v. Wakeman*, 32 L. O. 419.

DISMISSAL OF BILL.

1. *Payment of money out of court.*—A defendant who has paid money into court is entitled

on the dismissal of the bill to have it repaid to himself, without notice to the other parties to the suit. *Bulwinkle v. Vorwiny*, 32 L. O. 419.

2. *Filing replication.* — *Parties.* — *Costs.* — Where a motion has been made upon notice, and an order obtained for filing the replication within a certain period, or dismissal of the bill, and it appeared, that at the time of such order, one of the defendants at whose instance it was made was dead, the court discharged the order with costs, upon the ground of irregularity. *Evans v. Guillim*, 32 L. O. 373.

4. *Delay.* — *Abatement.* — Delay previous to the abatement of a suit is not a sufficient ground for dismissing the bill after the suit has abated. *Morrison v. Hoppe*, 33 L. O. 211.

EXCEPTIONS.

1. *Master's report.* — On exceptions taken by the plaintiff to a Master's report, it appearing that a material element of the inquiry had been overlooked by the Master, the court referred it back to him to review his report, not allowing or disallowing the exceptions, but ordered the deposit of 10*l.* to be returned, although the omitted inquiry had not been suggested, nor any evidence offered upon it by the plaintiff before the Master, the court being of opinion, that, from the nature of the reference, the onus of suggesting such inquiry lay on the defendant rather than on the plaintiff. *Mitford v. ynolds*, 1 Phill. 706.

2. *32nd sec. of Order 16th of 1845.* — Proper form of a special order allowing exceptions to be referred on the same day on which they are filed. *Teesdale v. Swindall*, 32 L. O. 371.

See *Amendment*, 3; *Demurrer*.

FEEs.

See *Commissioners*.

FOREIGN EXECUTOR.

The court will not pay money out of court to the executor of a deceased person appointed such abroad, but not having proved the will in England. *Lussieur v. Tyrconnel*, 33 L. O. 90.

FOREIGN COMMISSION.

Orders of 1845. — A commission to examine witnesses abroad is not within these orders, which apply only to commissions within the jurisdiction. *Read v. O'Brien*, 33 L. O. 91.

GUARDIAN.

Infant. — *Commission.* — The court will appoint a guardian to infants, without appearance or commission, where it appears upon affidavit that they are resident in different parts of England, that the proposed guardian is respectable, and that there is no adverse interest. *Topping v. Howard*, 32 L. O. 372.

INFANT.

See *Guardian*; *Preliminary Inquiries*.

INJUNCTION.

1. *Amendment.* — *Staying trial.* — The plaintiff, after obtaining the common injunction, got leave to amend his bill within three weeks. Before he had amended, but during the three

weeks, he moved to extend the injunction to stay trial. Motion granted. *Stratford v. Lewis*, 14 Sim. 120.

Cases cited in the judgment: *Simes v. Duff*, 9 Sim. 270; *Martin v. Mortlock*, 1 Newl. Prac. 356. (3rd ed.)

2. An answer was found insufficient. On the following day the plaintiff obtained an order to amend, and that the defendant might answer the exceptions and amendments together, undertaking to amend within three weeks; on the same day he obtained the common injunction. A few days after he moved to extend the injunction to stay trial: *Held*, that the proceeding was regular, and the motion was granted. *Goddard v. Smith*, 8 Beav. 41.

3. *Showing cause.* — Defendant moved for an order absolute to dissolve a common injunction; the plaintiff had been unable to get an office copy of the answer; time was given to the plaintiff to determine whether he would show merits or exceptions as cause. *Gibson v. Chayters*, 8 Beav. 167.

4. *Mistake in law.* — *Equitable interference.* — The court refused an injunction to restrain plaintiffs in an action at law from taking out of court money which the defendants at law had paid into court in the action, in ignorance, that upon such payment the plaintiffs at law were entitled to stay this action, and take the sum so paid. Such ignorance or inadvertence does not amount to that kind of mistake against the consequences of which equity will interfere to relieve: *Semble*, *Great Western Railway Company v. Cripps*, 5 Hare, 91.

5. *Theatre.* — The stat. 26 G. 3, c. 57, gave power to the crown to grant letters patent to keep a theatre in Dublin, and prohibited all persons from performing plays in Dublin for hire, under a penalty of 500*l.* for each offence, to be recovered by action of debt, &c., by any person suing. Letters patent were granted to *W. H.*, authorising him to establish a theatre, and perform plays in Dublin, and containing a clause prohibiting all other persons from doing so, unless authorised: *Held*, that the patentee could not sustain a bill for an injunction to restrain unauthorised persons who opened a theatre and performed plays contrary to the statute and patent.

In such cases the right to bring an action on the case and a bill for an injunction, are concurrent. *Calcraft v. West*, 8 Ir. Eq. Rep. 74.

INTERROGATORIES.

Commissioner. — 104th Order of 1845. — The commissioner under the 104th Order of 1845, may examine a witness previously examined on a fresh interrogatory without any order for that purpose, and ought to continue his sitting so as to facilitate the exhibition of such interrogatories if required, *Lancashire v. Lancashire*, 33 L. O. 69.

IRREGULARITY.

Acts amounting to waiver of irregularity in an attachment, though not available in answer to an application by a prisoner for his dis-

charge, are available where the party has obtained his discharge, and where his only object in impeaching the attachment is to set aside subsequent proceedings founded on it.

A *habeas* was issued under the usual order to bring up a defendant in contempt, for the purpose of a motion to take the bill *pro confesso* against him; on his being brought up the motion was refused with costs, but that decision was reversed on appeal, and a new *habeas* was afterwards issued under the same order, for the purpose of a renewal of the motion. *Held*, that the second *habeas* was regularly issued without a new order for it, on the ground that, owing to a mistake of the court, the original order had not been satisfied by the first *habeas*.

Where a bill against several defendants has been taken *pro confesso* against one, the clerk of the records attending for that purpose with the record, it is not the practice to require the clerk's attendance a second time on the hearing of the cause against the other defendants. Under the 5th Rule of 11 G. 4, and 1 W. 4, c. 36, s. 15, if the thirty days therein mentioned expire out of term, the defendant may be brought up to the bar of the court at any time during the vacation, without waiting for the four first days of the following term. *Needham v. Needham*, 1 Phill. 640.

Cases cited in the judgment: *Simmons v. Wood*, 2 Hare, 614; *Clark v. Clark*, 1 Phill. 116.

And see *Attachment, 2; Jurisdiction; Service Abroad*.

JURISDICTION.

Irregularity.—An order of course was obtained at the Rolls in a cause attached to another branch of the court. The order became inoperative by reason of delay in service. *Held*, that the order having been regularly obtained, a motion to discharge it, if necessary, was not properly made at the Rolls. *Plomer v. Macdonald*, 8 Beav. 191.

LACHES.

Publication.—*Bill to perpetuate*.—*Infant*.—An infant defendant answered, by guardian, to a bill filed in 1823, to perpetuate testimony. In 1836 he attained full age. In 1846, he moved for liberty to answer or demur, and excused the delay of ten years by stating circumstances showing great destitution. The court refused the motion with costs. A suit had been instituted in Ireland, to which the defendant was a party. Motion being made in the above-named English suit to pass publication, the motion was directed to stand over until publication had passed in Ireland. *Morris v. Morris; Same v. Same*, 33 L. O. 139.

MASTER'S CHIEF CLERK.

Though the respective duties of the Master's chief clerk and copying clerk are nowhere exactly defined, they are sufficiently distinguished in their general features by the provisions of the Chancery Regulation Act relating

to those officers, as well as by previous practice. And the Masters are not at liberty to distribute the business of their offices between their two clerks in such a manner as habitually to allot to the copying clerk duties which it is to be inferred from that act were intended to be exclusively performed by the chief clerk, although with proper limitations and on proper occasions, the Masters are entitled to require either of their two clerks to perform any official duty in which his assistance may be required, and for the performance of which he may be competent.

Any solicitor of the court has a right to complain by petition of an irregularity in the conduct of business in the Masters' offices, and on such irregularity being shown to exist, the Lord Chancellor may interfere to correct it, though no actual evil be proved to have resulted from it. *Case of the Masters' Clerks*, 1 Phill. 650.

MASTERS' REPORT.

See *Exceptions*.

MASTERS' JURISDICTION.

Amendment of bill.—*New orders*.—Under the general orders of May, 1845, relating to amendments of bills, application must, in the first instance, be made to the Master; consequently there can only be one appeal from his decision; and if such appeal be made to one of the Vice-Chancellors, there can be no further appeal to the Lord Chancellor. *Coombs v. Warwick*, 33 L. O. 164.

MASTER IN ROTATION.

17th Order of 1833.—The certificate appointing the Master in rotation under the 17th Order of 1833, during vacation, ought to be filed in the Records and Writs office after having been produced to the vacation Master as acting for the Master in rotation.

The omission thus to file the certificate will not justify a future application in the cause to any other Master than the Master therein named. *Lord Suffield v. Bond*, 33 L. O. 164, 187.

See *Attachment, 3*.

MISTAKE.

Decree.—*New orders*.—Mistake in a decree corrected under the 45th Order of 1828, notwithstanding it had been pronounced seven years, and the cause had been heard for further directions. *Askew v. Peddle*, 14 Sim. 301.

MOTION.

See *Affidavit; Cross Motion*.

NEW ORDERS.

1. *August, 1841*.—A defendant who had been served with the copy of the bill, entered a special appearance under the 27th Order of August, 1841, for the purpose of being served with notice of all proceedings in the cause: *Held*, that he was entitled to the same length of notice that the cause had been set down for hearing, as he would have had if he had been served with a subpoena to hear judgment. *Wilton v. Rumball*, 14 Sim. 66.

2. August, 1841.—The bill asked, whether A., who was not a party, claimed any interest in the matter in question. The defendants answered in the affirmative, and submitted whether A. had any interest.

Held, that the answer was a suggestion that the suit was defective for want of parties, and therefore, the plaintiff was justified in setting it down for argument on the objection, under the 39th Order of August, 1841. *Young v. Macdonnell*, 14 Sim. 34.

See *Amendment; Appearance; Master; Mistake; Pro Confesso*.

PAUPER.

1. An application by a party sued as executor, for leave to defend the suit, in *formá pauperis*, refused, though, in addition to the usual affidavit, he swore that he had been prevented by an injunction from receiving any assets, and *semble*, the result would have been the same if he had sworn that there were no assets. *Oldfield v. Cobbett*, 1 Phill. 613.

Case cited in the judgment: *Paradise v. Shepherd*, 1 Dick. 136.

2. It appearing on affidavits, that a pauper defendant was entitled to property exceeding 20*l.* in value, the court on motion ordered him to be dispaupered. *Goldsmith v. Goldsmith*, 5 Hare, 125.

See *Contempt*.

PAYMENT OF MONEY INTO COURT.

1. *Admissions*.—An order upon motion for payment of money into court, proceeds upon the admissions of the defendant, and evidence cannot be resorted to.

Three trustees admitted that trust money was standing in their joint names, but one only specified the amount: *Held*, that this was insufficient to found an order for its payment into court. *Boschetti v. Power*, 8 Beav. 98.

2. Application may be made for payment into court of a sum of money ascertained, pursuant to an order of the court, to be the amount of damages, although the certificate of such damage was only intended to be used in evidence in the cause. *Bagnall v. Whitehouse*, 33 L. O. 70.

3. The court will order the payment of dividends on stock directed to be transferred into court, to a tenant for life whose title is admitted, without requiring a petition to be presented for the purpose. *Fortnum v. Shackel*, 32 L. O. 396.

4. *Sale under order of the court*.—It is not regular to obtain an order for payment of purchase money into court, until it has been ascertained that the title has been accepted. *Rutter v. Marriott*, 33 L. O. 211.

5. *Interest on purchase money*.—When, according to conditions of sale, interest is stipulated to be paid on the purchase money, if the purchase is not completed by a certain day, the purchaser is not liable to pay interest on the amount paid by him for deposit. *Waldo v. Thesiger*, 33 L. O. 91.

See *Dismissal*.

PRELIMINARY INQUIRIES.

Order 5, May, 1839—*Infant heir-at-law*.—Where a creditor and administrator of an intestate, in his double character, filed a bill against the infant heir-at-law, for the purpose of making the real estate contribute towards the deficiency of the personalty, the court refused to direct, under the 5th Order of the 9th May, 1839, preliminary accounts and inquiries, upon the ground, that it would be unjust in such a suit and before answer, to throw the onus of taking the accounts upon the heir-at-law.

Proper course to be taken under such circumstances. *Leadley v. Lewin*, 32 L. O. 470.

PRO CONFESSO.

76th Order of 1845.—Form of the order for taking a bill *pro confesso*, against one of several defendants. *Smith v. Smith*, 33 L. O. 90.

PRODUCTION OF DOCUMENTS.

Amending bill.—A motion for the production of documents may be made upon the answer to an original bill, although the bill has subsequently been extensively altered by amendment, and it is not incumbent upon the plaintiff to show that the documents do not relate to the part of the bill struck out on such amendments. *Towers v. Rymer*, 33 L. O. 235.

PROOF VIVA VOCE.

Proof of a deed *viva voce* not allowed after the death of the attesting witness. *Joyntsen v. Moseley*, 33 L. O. 163.

PUBLICATION.

See *Laches*.

REPLICATION.

See *Dismissal*, 2.

RIGHT TO BEGIN.

See *Cross Motions*.

RECEIVER.

Where a receiver has become mentally incapacitated from performing the duties of his office, the court will allow the person who has managed the estates to pass his accounts in lieu of the receiver; but whether any salary will be allowed to him *quæry*? *Larking v. Oldham*, 32 L. O. 419.

SALE.

See *Payment into Court*, 4.

SERVICE OF BILL.

1. To obtain an order to enter a memorandum of service of a copy bill, it is not necessary to show by affidavit that no account, &c., is thereby prayed; the certificate of counsel of the fact is sufficient. *Jones v. Skipwith*, 8 Beav. 127.

Cases cited in the judgment: *Mawhood v. Labouchere*, 12 Sim. 762; *Davis v. Prout*, 5 Bea. 102.

2. 21st Order of 1845.—Where A. had appeared by a solicitor who had since died, the court required an application to be made to A.

to appoint another solicitor before it would allow personal service under the 21st Order of 1845, to be good service. *Kerton v. Lyne*, 33 L. O. 187.

SERVICE ABROAD.

Jurisdiction.—2 W. 4, c. 33, and 4 & 5 W. 4, c. 82.—*Orders of 1845.*—A bill was filed by assignees, praying an account of mercantile dealings between the bankrupt and the defendant, who was resident in Dublin. The court, under the 33rd Order of May, 1845, in November of that year, gave leave to serve a subpoena, for the defendant to appear and answer in Dublin; and no appearance having been entered on the 22nd of November following, leave was further given to the plaintiffs to enter an appearance for the defendant. Upon motion to discharge both orders, and to expunge the appearance, upon the ground of want of jurisdiction, the court refused to interfere, it appearing that the defendant had been in England since the filing of the bill, and it held that the orders were perfectly regular. *Whitmore v. Ryan*, 32 L. O. 516.

SEQUESTRATION.

Attornment.—*Sale of sequestrated property.*—A sequestration on mesne process will, in a proper case, be executed, and the court will direct the tenants to attorn to the sequestrators; but, will not until the amount of the costs is ascertained, nor except for the purpose of paying such ascertained amount of costs, direct the sale of goods seized under the sequestration, even though the value of the goods be gradually absorbed by the expenses of keeping them. *Goldsmith v. Goldsmith*, 5 Hare, 123.

Cases cited in the judgment: *Rowley v. Ridley*, 2 Dick. 622; *Heather v. Waterman*, 1 Dick. 335; *Franklyn v. Calhoun*, 3 Swanst. 306, n.; *Simmons v. Lord Kinnaird*, 4 Ves. 735; *Lord Pelham v. Duchess of Newcastle*, 3 Swanst. 290, n.; *Hales v. Shaftoe*, 1 Ves. jun. 86; 3 Bro. C. C. 72; 2 Cox, 224; *Knight v. Young*, 2 V. & B. 184.

SOLICITOR.

See *Amendment*, 1.

SUBSTITUTED SERVICE.

21st Order of 1842.—Where a defendant had given "The Queen's Prison" as his address, but had left before the usual time of service of process, without giving any other address, the court refused to allow substituted service at the Queen's Prison. *Wilkins v. Nainby*, 33 L. O. 45.

SUPPLEMENTAL ANSWER.

Before leave to file a supplemental answer can be obtained, the answer intended to be filed must be produced. *Robinson v. Wall*, 32 L. O. 372.

TRAVERSING NOTE.

56th Order of May, 1845.—19th and 20th Order of 1842.—Upon a motion for leave to serve a copy of the traversing note, under the 56th Order of May, 1845, upon a defendant

living out of the jurisdiction of the court, the motion was refused, the court being of opinion that the cause did not come within the operation of the order. *Anderson v. Stalher*, 33 L. O. 211.

VACATION.

See *Affidavit*, 1.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Rigby v. Strangways. Dec. 17th, 1846.

STAYING PROCEEDINGS.—SEVERAL SUITS.

The court will not stay proceedings in a second suit in the same matter, at the instance of a plaintiff in the first suit claiming less interest than the other plaintiff.

UNDER the circumstances reported, ante p. 138, the Lord Chancellor had refused the plaintiff in the second suit, who was also a defendant in the first, leave to enter an appearance under the new orders.

Mr. *Rolt* and Mr. *J. Baily*, for the plaintiff in the first suit, now moved for an order to restrain the plaintiff in the other from proceeding with it, as the object of both suits was the administration of the same testator's will, and thus double expense would be incurred by prosecuting two inquiries for the same purpose. The first bill stated that certain lapsed legacies had gone to the next of kin, who, as well as the heir-at-law, were unknown to the executors, and prayed the usual inquiries before the master. This plaintiff claimed as legatee and next of kin, and did not seek to establish the will against the heir-at-law, but relied upon the personal property. The plaintiff in the other suit had been served with a copy of the first bill under the orders of August, 1841, on the authority of *Davis v. Davis*, 4 Hare, 389.

Mr. *Stuart* and Mr. *Elderton*, for the plaintiff in the second suit, submitted, that the court would not prevent him from prosecuting his claim by a bill, as he was not a real defendant in the first suit no appearance having been entered, as above stated. The first plaintiff was of more remote kindred to the testator than the second plaintiff, and consequently would be entitled to a less share in the residue. The will gave real and personal estate upon trusts of conversion. The first bill did not bring the nearest next of kin nor the heir-at-law before the court, and thus a decree in it could not be perfect.

The Lord Chancellor thought that the present case came within that class by which it has been determined that proceedings in one suit will not be stayed at the instance of a party in another suit claiming a less interest. The question is, whether the decree sought by the first bill would give all the relief which could

be given. To this it was no answer to say, that it would give all to which that plaintiff was then entitled. His lordship could not see how, by the first bill in its present state, a complete decree could be obtained in respect of the will. The causes might be referred to the same Master, but this motion must be refused with costs.

Bagnall v. Whitehouse, Dec. 22, 1846.

PAYMENT OF MONEY INTO COURT. — CERTIFICATE OF VALUERS.

A party will not be ordered, as a matter of course, to pay into court a sum of money, the amount of certain damages ascertained pursuant to its order, by valuers, whose certificate is intended to be used as evidence in the cause.

THIS was an appeal from the Vice-Chancellor of England, who had ordered payment of the money into court under the circumstances of the case as reported in the L. O., ante, p. 70.

Mr. J. Parker and Mr. Prior, for the appeal.

Mr. Cooper and Mr. Daniel, contra.

The Lord Chancellor observed, that the result of the inquiry by the valuers was not to be considered final as in the case of an award by arbitrators. This certificate was intended to be used as evidence in the cause, and might ultimately turn out to be erroneous. The defendants could not therefore be ordered to pay this sum into court in the present stage of the suit. Order reversed.

Rolls Court.

Langley v. Fisher. Dec. 21st, 1846.

DELIVERY OF DEEDS OUT OF COURT.

Deeds brought into court on a suit which has been brought to an end ought to be delivered to the party who brought them in.

Mr. Cooper stated, that in this suit the clerks of records and writs were in doubt whether certain deeds which had been brought into court ought to be delivered out to the party who brought them in, or whether it was sufficient to deliver them to his solicitor. The suit had been brought to an end.

Lord Langdale said the order ought to be, that the deeds should be given up to the party who brought them in.

Lewis v. Cooper. Dec. 17th, 1846.

ORDER TO DISMISS.

An order to dismiss the bill, with costs, against certain defendants who had appeared and demurred, but whose demurrer had been overruled, held to be irregular, because it had been obtained without mentioning the fact of the demurrer.

THIS was a motion to discharge an order to dismiss the bill for irregularity. The bill

sought to restrain the payment out of court of a sum of £5,000, to the directors of a projected railway called the South and Midlands Junction Railway. Three of the defendants only appeared to the bill and demurred to it. The demurrer was overruled by the Vice-Chancellor of England, (see page 45, ante,) and these defendants had subsequently appealed to the Lord Chancellor from the order overruling it.

After the argument upon the demurrer, but before the appeal, the plaintiff amended his bill by striking out all the defendants but the three who had appeared, and then obtained an order to dismiss against the rest, on payment of costs, mentioning only the fact of the appearance, and of there being no answer, and not the demurrer.

The irregularity complained of was, the absence of any notice of this circumstance; and it was urged, that if the decision of his Honour should have been overruled, the defendants might be entitled to the costs of the demurrer, which would not be included in the costs under the present order.

Mr. Kinderley and Mr. Tyrrel for the motion.

Mr. Adams, in opposition, contended, that the appeal on the demurrer could not now be continued, since it would be only for costs; and that the plaintiff had a right at any time to obtain an order dismissing his bill with costs. The fact of a demurrer having been put in was immaterial to the obtaining of the order; and it was necessary to state such of the proceedings only as showed that the defendants had done that which would entitle them to costs.

Lord Langdale, after inquiring whether Mr. Adams had any authority for the order, said he thought it was irregular, though he did not recollect that any case had come before him under the same circumstances; but he was of opinion that all the facts should have been fully stated, in order that such inquiries as might be necessary might be directed. The circumstances appeared to him to be such as required a special order, and therefore the present order must be discharged.

Affirmed on appeal, Jan. 11, 1847.

Parker v. Watts. Dec. 19, 1846.

EXECUTOR.—ASSENT TO LEGACY.

It is not sufficient to prove an assent to a legacy by the executors to induce the court to order payment of it to a legatee, but the executors must either appear upon the petition, or service of it upon them must be proved.

THIS was a petition by a legatee for the payment of a legacy which had been assented to by both the executors; but one of them only appeared upon the petition.

Mr. Amphlett, for the petition, produced an affidavit of the assent, but it did not appear that the other executor had been served with the petition.

The Master of the Rolls said, he could not make the order unless the other executor appeared upon the petition, or proof was given of the serving of the petition on him.

Potts v. Whetmore. Dec. 19, 1846.

PAUPER.—NOTICE OF MOTION.

After an order has been obtained by a party to sue or defend in forma pauperis, and solicitor and counsel have been assigned to him, he cannot appear in person.

Mr. Teed moved in this case for an order, directing that the plaintiff should be at liberty to amend his bill.

Mr. Turner objected, that the motion could not be made as it was signed by the defendant in person, although counsel and solicitor had been assigned to him on his petition to sue in *forma pauperis*; and cited Daniel's Chancery Practice.

The Master of the Rolls said, the notice was clearly irregular, and the motion could not therefore be made until the defect was cured.

Vice-Chancellor of England.

Snow v. Hole. Dec. 7, 1846.

PURCHASE MONEY.—PAYMENT INTO COURT.

A plaintiff may move to make absolute an order nisi obtained by a purchaser in the cause for the payment of money into court.

In this case a sale had been made under the direction of the court, and the purchaser had obtained an order nisi for the payment of his purchase money into court. The plaintiff now moved to make this order absolute.

Mr Bigge for the motion.

Mr. Simpson, contra, objected, that such a motion could not be made by the plaintiff; but

His Honour held that the motion could be made.

The motion embraced, also, a reference of title to the Master, which his Honour held could not be made on the same motion, unless by consent; but when the first question was disposed of in the plaintiff's favour, the reference was made by consent.

Duncombe v. Levy. Dec. 15, 1846.

SETTING-OFF COSTS.

An order that, in setting off costs due from a plaintiff to a defendant against costs due from that defendant to the plaintiff, costs due to the plaintiff from that defendant and another should be included, is not a common order, but must be specially asked for.

In this case an order had been obtained upon the taxation of costs to set-off against the costs due from the plaintiff the costs due to him from one of the defendants.

Mr. Southgate now moved that the order might be altered so as to allow of costs due from the plaintiff to this defendant and another defendant in the suit being included in the

set-off. He contended that it was customary to extend a set-off as to costs to this extent, and cited Tidd's Practice, p. 191, 9th edition, to show a similar practice in the Queen's Bench.

Mr. Bethell contra.

His Honour said, that he saw no reason for altering the order. He was not aware that any such practice as was alleged existed in equity; and if it was intended to obtain a special order, the application should have been made at the time when the order was obtained.

Whitfield v. Lequentro. Dec. 21st, 1845.

DISMISSAL OF BILL.—16TH & 114TH ORDERS OF MAY, 1845.

A motion to dismiss may be made under the 114th Order of May, 1845, after the lapse of the time mentioned in the 45th section of the 16th Order, and any further period allowed by an order enlarging the time for setting down the cause, notwithstanding such an order shall have been obtained.

THIS was a motion to dismiss the bill for want of prosecution. It appeared that publication passed in May, 1845. An order had been obtained enlarging the time for setting down the cause till some time in June, 1846, but nothing had been done.

Mr. Shapter for the motion.

Mr. Welford, contra, contended, that the Orders of 1845 did not contain any provision empowering a defendant to move to dismiss; whereas, in this case, an order to enlarge the time for setting down the cause had been obtained. The 45th section of the 16th Order did, indeed, prescribe a time within which the cause should be set down, but the 114th Order, under which that motion to dismiss must be made, limited the right of moving to certain specified cases, of which the present was not one.

The Vice-Chancellor said, that he thought the motion could be made. It seemed to him that the first clause of the 114th Order provided generally for the right to dismiss the bill. None of the four cases mentioned in it were exactly parallel to the case mentioned in the 45th section of Order 16. He regarded them as additional cases.

Queen's Bench.

(Before the Four Judges.)

Spencer v. Harrison and others. Hilary Term, 1847.

PRACTICE.—PLEADING.—EVIDENCE.

In an action of trespass against three defendants, where a verdict is found for the plaintiff against two of the defendants, the court will not grant a rule for a new trial on the affidavit of the other defendant, stating that he is willing to give up the advantage of a verdict in his favour, in order that certain facts might be given in evidence for the de-

fence on a subsequent trial which were not admissible on the former trial by reason of an error committed in the pleadings.

THIS was an action of trespass against three defendants—the landlord, the broker, and the broker's man, for taking goods. Plea, not guilty by statute. A verdict was found for the plaintiff against two of the defendants, the broker and the broker's man. The defence intended to be raised by the defendants was, that the goods in question had been clandestinely removed from the premises, and that the defendants had followed them. It appeared at the trial that this evidence was not admissible under the plea of not guilty by statute, (11 Geo. 2, c. 19,) where the goods had been followed.

Mr. Chambers moved for a rule to show cause why there should not be a new trial. The motion was made on the affidavit of Mr. Harrison, the landlord, who stated that he was willing to give up the advantage he had obtained by a verdict in his favour, in order that the defendants might in a subsequent trial have an opportunity of setting up the defence which they were precluded from giving in evidence on the former trial by reason of an error committed in the pleadings.

Lord Denman, C. J. I think nothing would be more dangerous than to grant an application of this nature.

Patteson, Coleridge, and Erle, J.'s, concurred.

Rule refused.

Queen's Bench Practice Court.

Regina v. John Keen. Hilary Term, Jan. 12th and 14th, 1847.

(Coram Erle, J.)

PRACTICE IN FILING AFFIDAVITS.

A rule nisi having been obtained to quash the return to a certiorari, it was provided by the rule, that all affidavits to be used in showing cause against it were to be filed by a certain day. After the expiration of the time so limited, but before the rule was returnable, an application was made on behalf of certain parties, on whom the rule had been served, but who were not directly affected by it, for leave to file affidavits with a view of showing cause against the rule, on the ground that they had only just discovered that they might be affected by the rule being made absolute.

Held, that the application was reasonable, under the circumstances, and one which they had power to grant.

In this case Huddleston had, in Michaelmas Term last, obtained a rule for a *certiorari* to remove into this court the allowance of the accounts of a poor-law auditor, under the 7 & 8 Vict. c. 101, s. 35, and upon the return being made, he obtained a rule *nisi* to quash the same. This rule was returnable on the 16th of December, and was duly served upon the auditor and guardians of the union on the 5th

of December. By the rule it was provided that all affidavits to be used in showing cause were to be filed on or before the first day of the present term. The guardians, thinking that as the rule was moved against the auditor, they were not in any way interested in the result of it, took no steps to oppose its being made absolute; but having a few days since ascertained that in event of the return being quashed, they would be liable for costs, wished now to be let in to show cause against the rule.

Whitmore now applied on the part of the guardians for a week's time to file affidavits, and contended that it was quite within the power of the court to grant that time, and that, if so, this was a case in which, under all the circumstances, the court would exercise that power.

Huddleston, (who appeared to show cause in the first instance,) contended, as the affidavits had not been filed before the first day of term, as provided for by the rule, they could not be filed now. *Turner v. Unwin*, 4 Dowl. 16, was in point, and decided that in all cases where a rule required the affidavits to be used in showing cause against it were to be filed within a certain time, the affidavits must be filed within the time prescribed. The rule of court, (R. M. 36 Geo. 3,) was precise upon this point. He also cited *Wright v. Lewis*, 8 Dowl. 298; *Pryor v. Swaine*, 2 Dowl. & L. 137.

Whitmore, contra, contended, that as the application was made before the return of the rule, that it was in time. With regard to the cases cited, they were all cases where the rule was due or had been enlarged; and, indeed, in *Pryor v. Swaine* further affidavits were allowed to be filed.

Cur. adv. vult.

Jan. 14. Erle, J., now delivered his judgment. I have looked into the authorities cited by Mr. Huddleston, and have consulted the other judges, and we think that the application ought to be granted with regard to the authorities cited. They were cases of enlarged rules, in which favours had been asked on terms imposed, that the affidavits should be filed by a certain day. Now, in the present case, the questions came before the court for the first time, and the rule is not due. I therefore think, that the application is but reasonable, and ought to be granted.

Application granted.

Common Pleas.

Eyton v. Taylor. Hilary Term, 1847.

WRIT OF SUMMONS.—PLACE OF RESIDENCE.—IRREGULARITY.

A rule nisi will be granted to set aside the copy of the writ of summons and the service thereof, where the place of residence is stated in the writ to be in the wrong county, and different from that in which service has been made.

Maynard moved for a rule to show cause why the writ and subsequent proceedings in this case, or the copy and service of the writ

should not be set aside for irregularity, with costs, and for a stay of proceedings in the mean time. The affidavit on which he moved stated, that in the writ of summons the defendant's place of residence was described as of No. 12, North Buildings, Finsbury Circus, in the county of Middlesex. That in fact the whole of North Buildings was in the city of London, and that service had not been made in the county of Middlesex, but in the city of London, on the 12th instant.

Wilde, C. J. Your rule will be to set aside the copy of the writ and service thereof.

Rule *nisi* accordingly.

Exchequer.

Smith v. Temperly. Hilary Term, 13th Jan., 1847.

AFFIDAVIT IN BANKRUPTCY.—COSTS.—TIME OF MOVING.

A rule calling on the plaintiff to pay costs on the ground that he recovered a less sum than that for which he filed an affidavit in the Court of Bankruptcy must, in cases of speedy execution, be made within the first four days of the ensuing term, and in all cases before final judgment.

Quære, whether the 19th section of the Bankrupt Act, 5 & 6 Vict. c. 122, applies only to cases in which a bond is given under the 13th section.

THIS was an action of debt to which the defendant pleaded never indebted and a set-off. The amount indorsed on the writ was 103*l.* 4*s.* 8*d.* After action commenced the plaintiff filed an affidavit in the Court of Bankruptcy, under the 11 & 12 sections of the 5 & 6 Vict. c. 122, and delivered particulars of demand, in which he claimed 104*l.* 18*s.* 5*d.* The defendant appeared in the Court of Bankruptcy and made a deposition that he had a good defence, upon which the commissioner dismissed the summons with costs. The cause was tried at the Surrey summer assizes, and a verdict found for the plaintiff for 74*l.* The judge granted speedy execution, and on the 7th August final judgment was signed and execution issued.

Warren, on the 21st Nov., obtained a rule calling on the plaintiff to show cause why he should not pay the defendant's costs, on the ground that the plaintiff recovered less than the amount for which he filed his affidavit of debt. (See 19th section 5 & 6 Vict. c. 122.)

Lush showed cause. First, the 19th section of the 5 & 6 Vict. c. 122, cannot apply to a case in which a summons is dismissed, but only to a case in which a bond is given under the 13th section. Under the 43 Geo. 3, c. 46, a plaintiff was liable to costs if he held the defendant to bail for a larger amount than he recovered, not if he made an affidavit of debt. Secondly, the application is too late: it might have been a ground for asking the judge not to grant speedy execution; that not having been done, the application should have been made within the first four days of term. *Baddeley v. Oliver*, 1 Dow. 598; *Calvert v. Everard*, 5 M. & S. 510; *Unwin v. King*, 2 Dowl. 593.

Warren and Hill, in support of the rule, argued, first, that the 19th section of the 5 & 6 Vict. c. 122, applied to all cases in which an affidavit of debt was filed, and particulars thereof served on the debtor. Secondly, that the defendant had the whole of the term after the trial to make the application. *Watson v. Boyes*, 13 M. & W. 635.

Pollock, C. B. The court are not prepared to give a solemn judgment upon the first point, and it is unnecessary to do so, for the application is not in time. The judge at *nisi prius* granted speedy execution, but that is subject to an application to the court in banc to be made within the first four days of term, and this motion should have been made within that period.

Parke, B. I do not find that it has been previously decided that applications of this kind must be made within the first four days of the term following the trial, but I think it is a very reasonable rule to lay down. I give no opinion upon the construction of the act of parliament, because my mind is not made up upon that point.

Alderson, B. As to the construction of the act of parliament I do not entertain so much doubt as the other judges, but on that point I give no opinion, as the application is clearly too late. I do not mean to say that it must in all cases be made within the first four days of the term, but it must be made before final judgment is signed.

Platt, B., concurred. Rule discharged.

NOTES OF THE WEEK.

OPENING OF PARLIAMENT.—THE QUEEN'S SPEECH.

THE Queen opened the parliament in person, on Tuesday last, the 19th instant, and we extract the only passage from her Majesty's speech relating to the law,—namely, that in which reference is made to the preparations for carrying the Small Debts Act into effect. It is as follows:—

"I have ordered every requisite preparation to be made for putting into operation the act of the last session of parliament, for the establishment of local courts for the recovery of small debts. It is my hope that the enforcement of civil rights in all parts of the country to which the act relates, may by this measure be materially facilitated."

NOTICES OF NEW BILLS.

Lord John Russell has given notice to consider the Corn Laws and the Navigation Laws; also the Law of Settlement.

Mr. Fielden will bring on the subject of the Hours of Labour in Factories.

Mr. Ewart resumes his measure for abolishing the Punishment of Death in all cases.

The Oxford and Cambridge Universities are to be inquired into by Mr. Christie.

The Roman Catholics seek still further relief, under the advocacy of Mr. Watson.

The Agricultural Tenant-rights in England and Wales are proposed by Mr. Pusey to be extended.

NISI PRIUS CAUSE LIST.

Common Pleas.

REMANETS TO HILARY TERM, 1847.

Stutt	Parratt	S. J. Lord Beresford & another	Ca. { Walker, G., & Co. Wilkinson
Duncombe	Farmer	S. J. Harman	Cov. Stevens and F.
J. Francis	Morgan and another	S. J. Earl Abergavenny	Ca. Richardson and T.
Williams	West and others	Avery	Dt. Bigg and Co.
Capes and S.	Joll and another	Stewart	Prom. D. Keane
W. D. Draper	R. Thompson	O. Thompson and J. Stocken	White and Co.
A. J. Lane	Parkes	Strong	Dt. Taylor and Co
B. Field	Griffin and another	S. J. Beverley and another	Prom. W. R. Hill
Patten	Chitty	Smith and another	Prom. Clayton and Co.
H. Wickens	Jacobson	Hunter and another	Trov. Isaacs
Davies and E.	Keating	Smith	Dt. W. C. Smith
R. Ford	Baker	Lyndon	Prom. Mayhew and S.
Hobler	Honeyball	Colson	Tres. Vickery
E. Smith	Day	S. J. Daintree	Prom. Amory and Co.
Dalston	Humo	Davis	Iss. Sydney
H. and O. Webb	Goddard	Dobson	Dt. Parker, T. and Co.
Warrand	A. Woodgate	W. Woodgate	Dt. Bristow and T.
C. F. Cundy	Vere Fane, executor, &c.	J. C. Gant, administr. &c.	Cov. J. C. Gant
Stafford	Salmon	Moffatt and others	Prom. J. Mills
J. B. Jackson	Smythe	Padgett	Prom. C. J. Sheriff
Rosson	Harding	Burroughs	Prom. W. and E. Dyne
J. Skinner	Wilson	Pickett	Prom. Bateman
W. E. Goatley	J. P. Shaw	J. Johnson	Prom. Elmslie and P.
Venning, N. and R.	Doe d. Raper	Temperley	Eject. Henderson
Walker, Grant, & Co.	Giles and another	S. J. Cornfoot	Dt. Elmslie and Co.
Same	Same	S. J. B. Bastow.	Dt. F. Tritton
Same	Same	T. Wakefield	Dt. Pile
Same	Same	Edwin Smith	Dt. G. Hellirfin
Same	Same	S. J. R. Keily	Dt. Columbina
Same	Same	S. J. J. M. Durrant	Dt. Palmer, F. and Co.
Same	Same	S. J. T. M. Durrant	Dt. Same
Same	Same	S. J. J. Hilder	Dt. Same
Same	Same	S. J. G. Ballard	Dt. Same
Same	Same	S. J. F. Reeves	Dt. Same
Same	Same	S. J. J. Bishop	Dt. Same
Same	Same	S. J. G. A. Lamb	Dt. Same
Same	Same	S. J. S. Phelps	Dt. Same
R. Fisher	Dawson and others	Marriott	Dt. Strangways
Same	Same	Meager	Dt. E. Strick
Same	Same	Tucker	Dt. E. G. Flight
Same	Same	Ewens	Dt. Clowes and W.
H. Ward	Collins	S. J. Bennett	Dt. Smith
Milburn	Connop	Padgett	Prom. Sheriff
Kingdom	Stannard, assignee, &c.	Marchant	Prom. Horsley
W. F. Walker	Attfield	Chitty	Tres. H. and T. Cross
Stafford	Salmon	Baker	Prom. W. Whally
Carlton and H.	Hunt	Smart	Trov. J. Notley
Strutt	Parratt	Graham	Prom. Leadbitter
Fitzpatrick	Close	Smith	Ca. Few and Co.
Wakeling	Murphy	Cadell	Dt. T. S. Wright
Anthony	Edwards	Cloke	Ca. Fennell and Co.
G. Lewis	Jackson	Frost	Prom. Townsend
Finney	Davidson	Chadwicke	Prom. Bebb and Rose

Echequer.

Kennedy	Kennedy and another S.J.	Sprott	Dt. Parkes
J. L. Dale	Bardell and others, execu-	tors and executrix	Dt. Baxendale and Co.
C. Lewis	Reeve and another S. J.	Pickford and others	Pro. Benbow
Humpage	Charlton	Marquis Conyngham	Pro. Rhodes and L.
Nation and H.	Renshaw	Windle	Pro. Todd
Gregory and Co.	Clark	Harley	Pro. Frampton
Lofty and Co.	Wakley	Thomas	Cn. Catlin
Petherick	Lemon	S. J. Cooke and another	Dt. In person
Bell and Co.	Reay	Layton	Pro. Newman
Lefroy	Staples	Laidler	Dt. Allen
In person	J. W. P. Scott	Snow, executrix	Dt. Hill
G. Y. Sparke	Maidlow	Elliot	Dt. Pocock and M.
Helsham	Johns	Haig	Tress, Hughes
Fitch	Edwards	Lowley	Dt. D. Hill
T. M. Wilkin	Boulter	Elliott	Pro. Brookbank
A'Beckett and Co.	Bidgood and others	Cutts	Dt. Chilton and Co.
Chisholme	Ball	Corbett and another	Dt. Gray and B.
Sangster	Brooks and another S. J.	Welch	Pro. Allan and Son
Cooke	Wilson	Atkinson	Dt. R. O. Banks
J. G. Reynell	Grogan	Banks	Tress, Humphreys
Steele	Baxter	Hanley, sued, &c.	Dt. L. Levy
Burbidge	Jones	Stanton	Tress, Duncombe
Archer	Black	McMair	Pro. Hare
J. Orchard	Casse	Wainwright	Issue, Vincent and B.
G. Lewis	Jackson	Cockburn and another	Pro. Graham
Webber	Leith	Marks	Pro. Goddard and Co.
Orchard	Casso	Marshall	Issue, W. Moss
W. H. Davis	Fisher	Sellers	Pro. Clarke and Co.
Lander	Brown	Viscount Ranelagh	Pro. Stevenson
Howard	Sturm and another	S. J. Levius	Pro. Thompson
Cullen	Weller	Jeffree	Dt. Elderton.
		Messenger	

THE EDITOR'S LETTER BOX.

We think the Devise stated by "Tacitum" was effectual, although the testator's title was open to dispute at the time of his death. Our correspondent, however, should submit the case to counsel.

In consequence of the alteration in the Law relating to Bankrupts and Insolvents, it would not be sufficient to give a Monthly List of Fiats in Bankruptcy. Insolvents petitioning the Bankrupt Courts must be added. We have scarcely room for both lists. Only one subscriber has suggested them.

Our worthy correspondent, "A Special Pleader," observes that the case *In re Taylor*, on the subject of the after acquired property of an insolvent, referred to by W. W. T. (p. 216 ante) does not apply to the case put by G. H. of a petition and final order under 7 & 8 Vict. cap. 96 (p. 149)—for in Taylor's case both petition and final order were in 1843, and the 7 & 8 Vict. cap. 96 was not passed till August, 1844. There is a slight misprint in "Special Pleader's" letter, p. 200, col. 2, line 12 from bottom. In setting out part of 7 & 8 Vict. c. 96, s. 73, I interpolated the word "present" in crotchets, [present] as the obvious meaning of

the act; but, in printing, the crotchets have been omitted, so that the word appears as if copied from the act, which is not the case.

"Vindex," an old and constant subscriber, observes, that by the 125th section of the new Small Debts Act, it is enacted, that all actions and proceedings which, before the passing of that act might have been brought in any of her Majesty's superior courts, where the plaintiff dwells more than twenty miles from the defendant, *or where the cause of action did not arise wholly or in some material point within the jurisdiction of the court within which the defendant dwells or carries on his business*,—and he inquires whether or not a concurrent jurisdiction is reserved to the superior courts in actions upon bills of exchange and promissory notes, notwithstanding there may be less than 20l. due upon the same, for it is a well-established point of legal practice, that the cause of action upon such instruments cannot be said to arise any where in particular, being transitory, and to which the idea of locality cannot attach, nor can the venue thereon be changed? See Chitty's Archbold's Practice, vol. 2, and the several decisions there set forth.

The Letter on Distress for Rent shall be inserted.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JANUARY 30, 1847.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

OPENING OF THE SESSION OF PARLIAMENT.

WE do not participate in the surprise expressed by some persons, that her Majesty should have been advised, in her speech at the opening of the session of parliament, specially to refer to the act passed in the last session for the establishment of Local Courts for the recovery of Small Debts.^a The act is potent for good or for evil! It is of superlative importance that the administration of justice, as regards the enforcement of civil rights throughout the kingdom, should be conducted in such a manner as to secure the confidence and respect of all classes of the community. The measure in question is the boldest experiment in legal legislation which our time has produced. Its operation is not confined to the modification of particular principles, or the adoption of a new code of practice, or the substitution of dissimilar forms of procedure. It is a conculcation of the spirit, the principles, and the manner, in which the existing law is administered; and to render the modal diversity more perfect, there are to be new judges and new courts, held at different times, and in different places, from those in which courts have been hitherto holden, and frequented, we venture to predict, by a class of practitioners somewhat different from any with which the people of England have been hitherto acquainted. With a commendable degree of caution, her Majesty's speech is

confined to the expression of a hope, in which all her subjects may cordially unite, that the enforcement of civil rights “may by this measure be materially facilitated.” Had this hope been associated with any expression of confidence, we should have been disposed respectfully to inquire upon what it rested? Certainly, not upon the success of contemporaneous legislation.

The evening of the day on which her Majesty pronounced the words cited, produced the most signal, unqualified, and unanimous, condemnation of some of the most important legislative measures of the session of 1846, that, we venture to think, was ever heard within the walls of parliament. To meet the awful distress occasioned by the failure of that which formed the principal article of sustenance for a considerable portion of the Irish people, the Labour Rate Act,^b passed at the close of the last session. It was put into operation in 293, out of 326 baronies in Ireland; and, according to the report of the government Inspector-General, the only effect of this measure was, to obstruct the public conveniences. Indeed, the Lord Lieutenant of Ireland, with a promptitude which seems to have obtained universal approval, took upon himself to dispense with some of the provisions of the act, and substitute arrangements better adapted to the exigency of the occasion, relying on the good sense of Parliament for his indemnity. In short, to use the expressive language of Lord Stanley, “the Labour Rate Act is admitted to have been a great blunder in legislation.” There was another act of the last session, under which the Treasury was em-

^a The paragraph in the Queen's Speech referring to this subject, was printed in our last number, page 286.

powered to grant money to be expended in public works in Ireland, such as moles, harbours, and fisheries. The noble lord who was selected by the government to move the address in the House of Lords, in answer to the Queen's speech, said, in reference to that act, that "it was clogged with such inconvenient provisions, that not one farthing had been advantageously applied under it."^c As to the Drainage Act, the same high authority accounts for its failure by stating that many of the landowners had no land which required draining. It may be said that the measures to which we have adverted relate exclusively to Ireland; and that every thing connected with that country is anomalous and presents insuperable difficulties to beneficial legislation. The operation of the Poor Removal Act of the last session (9 & 10 Vict. c. 66,) is expressly limited to England. It was announced with a great flourish, as a measure from which the most extensive benefits might be expected. After much clipping and alteration, it obtained the Royal assent so late in the session as the 26th of August. A great majority of parishes throughout the kingdom wisely and humanely determined, for reasons already fully entered upon,^d not to attempt to carry its provisions into effect; but the confusion and injustice created by its limited operation have been so strongly felt, that the earliest opportunity was taken by men of all parties in parliament, within the first week of the session, to proclaim its mischievous consequences, and insist upon its immediate modification or repeal.

We shall, perhaps, be told, that the measures referred to as admitted failures are wholly unconnected with the Act "for the more easy recovery of Small Debts," and we readily concede that it may furnish a striking contrast with the fabrics of the same manufacture, and prove as fruitful of good as the other important measures of last session have of mischief. We must be excused, however, for entertaining some misgivings on this point, when we find that no person possessing any public character as a statesman or a lawyer has avowed himself to be the author of the measure. Neither the late Lord Chancellor, nor the Noble Lord who at present holds the Seals, neither the ex-Attorney-General, nor the present Attorney-General, the Solicitor-

General of the Peel administration, nor the learned gentleman who fills that office under Lord John Russell's government, has on any public occasion declared himself to be personally accountable for the measure, either as to its principles or its details. It was incubated under one administration and hatched by another; and although neither the one nor the other could be expected to be wholly indifferent to the tempting opportunity it affords of providing for needy but deserving partisans and friends, we shall be little surprised at no very distant period to find it disclaimed by both. Be this as it may, the pressing question is, how the act is to be worked?

Amongst the multitude of candidates, aspirants and expectants, which the act has engendered, those who frequent Westminster Hall, it may be readily supposed, have met some who are avowedly admirers of the principle of the measure, and a few who are gallant enough to stand up and advocate particular provisions; but we have not yet learned that any one, with the slightest pretension to practical knowledge or experience, has alleged, that the act in its present shape, and without extensive alterations, can be effective. Whether it is expedient that a measure of such magnitude and importance should be set to work in an imperfect state, and the extensive machinery indispensable to its operation organised and put in motion, with the certainty that it will shortly require to be altered and remodelled, those who are charged with its execution must take upon themselves the responsibility of determining.

To ordinary apprehension it would seem a more prudent course to suspend the operation of the act until the more palpable defects are amended by legislative interference; and notwithstanding the loud notes of preparation that have been sounded, we are not yet assured that such will not be the course pursued. If we desired to insure the ill-success of the measure, and were actuated exclusively by those sordid considerations which the vulgar charitably impute to all professional men, we should desire nothing better than the Small Debts Act of last session, patched up by annual Amendment Acts. That it will produce an abundant crop of litigation, and present a profitable field for the industry of that indefatigable race whose printed circulars and advertisements furnish such ridiculous caricatures of the form and style of professional applications, is more than probable. Whether it will

* See Lord Hatherton's Speech, Morning Chronicle, Wednesday, January 20.

^c See Leg. Obs., p. 73, ante.

increase the popular respect for the law or its regular professors, a short time will determine! Meanwhile, we promise our readers that they shall have the earliest and fullest information as to its progress and operation that we can procure from authentic sources.

RUMOURED CHANCERY REFORMS — LORD COTTENHAM'S SPEECH.

Rumours fill the air of the Courts of Chancery regarding very comprehensive and important changes, both in the practice and jurisdiction of our courts of equity.

1st, It is said that the 22nd section of the Small Debts Act, 9 & 10 Vict. c. 95, under which the judges and officers of the local courts are authorised to perform all such duties relating to causes or matters in Chancery in their respective districts as the Lord Chancellor may direct, will be carried into effect; and that inquiries hitherto conducted in the Masters' offices in London, will be transferred to the districts where the questions arise. It is argued that this alteration will save much time and expense; and looking at the present mode of proceeding in the Masters' offices, there seems good ground for the assertion; but whether the Masters' offices might not be so improved as to leave the course of business in its present channels, is another question, which we shall have hereafter to consider.

2nd, It is stated, indeed, that the much-needed reform in the Masters' offices, particularly in regard to the attendance of warrants, for a single hour, at long-distant days from each other, is again under consideration. The delay in effecting this and other improvements in the mode of proceeding in the Master's offices is much to be regretted.

3rd, But the most important alteration at present projected is, the conferring an equity jurisdiction on the Small Debt Courts to a limited amount,—so that the recovery of a small legacy—the administration of assets of a small amount—or the enforcement of a contract for a small purchase,—may take place in a summary way before one of the local judges. We cannot but admit that the large fees of office, and the delay in taking accounts, render it almost impracticable to obtain justice under the present system; but then it may be urged, that the diminution of many fees, and the abolition of others, with the

adoption of improvements, of which the machinery of the Court of Chancery is susceptible, would mainly remove the grievance.

The present Lord Chancellor, in one of his speeches last session, when the Charitable Trusts Bill was under consideration, described the powers and efficiency of the court in a very masterly manner; and,—seeing that large and sweeping alterations are projected,—we think this will be a fitting opportunity to record the views and sentiments which Lord Cottenham then powerfully and successfully urged against the removal of suits, relating to the property and administration of charities of a limited amount, from the Court of Chancery.

I cannot look back to what has taken place in the Court of Chancery since 1841, and not implore your Lordships to stop that course which has already been productive of such great evils—which, if continued, must be productive of so many more—and which this bill, if passed, will tend not only to augment but to perpetuate. Since 1841, my lords, the increase of the patronage of the great seal has been such as would astonish your lordships, if brought under your notice in such a manner as to give you an immediate view of the whole. Since that period a system has been going on of withdrawing from the Court of Chancery matters of jurisdiction which it has always held—powers which that court has always exercised—and of establishing, at an expense to the country which your lordships little apprehend, new tribunals possessing little better opportunity than the Court of Chancery to determine the matters which may come before them; a system tending, I must say, to the degradation of the Court of Chancery, and to a deterioration of the efficiency of that court in a manner which I shall presently explain. But, my lords, before I go into details, I beg to recall to your lordships' recollection a measure which I have great satisfaction in saying I had the honour to originate in this house. In 1841, shortly before the government then in power, and of which I had the honour to be a member, went out of office, I had the honour of introducing into and passing through this house a bill which I still view with much satisfaction, because I believe it has been attended with infinite success and great public advantage. I refer to the bill for abolishing the equitable jurisdiction of the Court of Exchequer, and for transferring it to the Court of Chancery. It provided for the appointment of two additional judges to the Court of Chancery; and it transferred one of the Masters of the Equity Chamber of the Exchequer to the staff of the Masters in Chancery. That bill proposed to remove all the business from the equity side of the Exchequer into the Court of Chancery; and in order to meet the mass of business which had

then accumulated in that court, as well as that which might be expected to be added by the abolition of the other court, we proposed the addition of two new judges, and transferred one master from the Court of Exchequer to the Court of Chancery; and thought that by these means we should so add to the strength of that court, that we should enable it not only to get through the mass of business then existing, but also to overtake the fresh business which might be expected to flow in. Although we thought that increase of business might be considerable, still we thought it not likely to be greater than we provided for by the additional strength we gave to the court. Such was the nature of the bill which I had then the honour of introducing to your lordships' notice. My noble and learned friend behind me (Lord Brougham) always and strenuously opposed that bill, so far as the appointment of two additional judges to the Court of Chancery went; he denied that either the arrears then in the Court of Chancery, or the additional business to be thrown upon that court by the abolition of the equity side of the Exchequer, justified the appointment of two new judges. My noble and learned friend was willing to accede to the appointment of one new judge, but no more. My lords, the whole subject was anxiously investigated; the measure was sanctioned by the approval of my noble and learned friend on the woolsack, and it passed this house in 1840, but it did not pass the House of Commons in that year. It was again introduced in 1841, and again it received the sanction of your lordships; and although it did not then pass the House of Commons, it was so well received there, that I am quite justified in saying, that it met with the unanimous approbation of that house. Not the slightest opposition was breathed against the measure: its necessity was admitted—though whether it would ever have received the approbation of the political friends of my noble and learned friend, had the government of that day not been about to be removed from office, I am unable to say.—However, my lords, it met with no opposition from that party, and might have become the law of the land before we went out of office, but for a reason to which I would not have dared to advert had it not been openly avowed in the House of Commons. When the bill was under discussion in that house, a very talented and a very learned gentleman, one of my noble and learned friend's warm political admirers, declared, although it was necessary that it should pass, in order to expedite the course of justice in the Court of Chancery—although it had been two years before parliament, yet, if it passed at that moment, when there was a possibility of a change in the government of the country, that the measure ought to be postponed. Now, my lords, that appeared to be very sound reasoning to the minds of the political friends of my noble and learned friend; and the bill was accordingly thrown out upon that all-sufficient ground. There is no disguise about the matter. There was not even an attempt at concealment. It was frankly said, "The bill is a good bill,

but do not let us pass it now—let us turn out the government—we shall then come in—and we shall have the appointments of the new judges." Accordingly, my lords, such reasoning succeeded, and for a time the bill was thrown out; but the promise was kept: the change of government took place, and the bill was actually passed in the short session of 1841 which succeeded the general election of that year, and became the law of the land. I make no complaint about these matters, my lords. I only refer to them to show your lordships that in that year a great accession of strength was given to the Court of Chancery; that two new judges and one master were added to the judicial strength of former years. We were of opinion that such an increase of strength would be found only adequate to the necessity which existed.

I believe (said his lordship) that the strength of that court is found to be as nearly as possible the proper strength, and that both judges and masters are now adequate to the duties and to the business they are called upon to perform.

As the court stands at present, I believe it to be, as nearly as possible, of the strength it should be; it certainly is now fully adequate to the discharge of all the business which is brought to it. I believe no arrears have accumulated; in fact, my lords, I believe that the present strength of the court is quite sufficient, if not for more, certainly for all the business which offers, and it is now regularly got through. You have, accordingly, a body of officers attached to that court who are certainly not overworked; and I contend that it is the duty of the legislature to avail themselves of the machinery already to be found in the Court of Chancery, whenever it is possible to do so. Now, my lords, without meaning to express any opinion upon another measure, which was subsequently passed through the legislature, I am anxious to call your lordships' attention to it, in order to show that by its means the duties of the Masters in Chancery have been very materially reduced, and that, as the Masters themselves said, they have abundance of time to carry out the duties which the bill before us would impose upon them, if your lordships were to allow it to pass into a law. Some of your lordships may be aware that a considerable portion of the time of the Masters in Chancery is occupied in the taxation of costs. What portion of their time is so occupied may be gathered from the fact, that, since 1841, seven individuals have been appointed, at a salary of 2,000*l.* a year each, to perform that work. Six of those persons were first appointed for the purpose of taxing costs generally; and at a subsequent period, another master was appointed for the sole purpose of taxing costs in bankruptcy. All of those seven individuals were appointed to perform duties which heretofore had been done in the Master's office. My lords, I am not complaining of those appointments. I desire to give no

opinion respecting them. I am only showing your lordships what part of the former business belonging to the office of the Masters in Chancery has been removed from that office, and handed over to new tribunals, which have been created at a great expense to the country, and all tending enormously to increase the patronage of the great seal. Those were all new offices, and, of course, the appointments fell into the hands of my noble and learned friend. In addition to those new offices, others were created; a bill was introduced and passed, making very considerable alterations in the laws relating to bankruptcy. In 1843, my noble and learned friend proposed to appoint some very important officers, or judges, in that court—most important officers, my noble and learned friend termed them; and so should I, if I were to judge from the salaries attached to their appointments. The cost to the public of those new offices is very great. There are twelve gentlemen appointed commissioners in bankruptcy in country districts, each having a new and separate court, with salaries of 1,800*l.* a year each. My lords, I do not quarrel at all with those appointments, nor do I quarrel with the salaries given to the gentlemen who are appointed to perform duties that are certainly of very considerable moment. But, my lords, at the same time, 500*l.* a year was added to the salaries of each of the London commissioners; and why, or for what, I never could conceive. Up to that time they had performed their duties most efficiently; they were happy and contented; and I believe, my lords, that no men were more astonished than those very London commissioners, when my noble and learned friend, in a fit of generosity, said to them—“You do your work well, and do not grumble; you do not complain, but I am convinced that you are underpaid; and you must oblige me by taking 500*l.* a year more each of you.” All those new offices, and all those new appointments were created and made at an expense to the country of 56,800*l.* per annum, and the patronage of the whole of them has been added to the great seal since 1841. The business of the Court of Chancery has been since that year uniformly reduced, while the strength of the court has been uniformly increasing; and now, with the Court of Chancery in this powerful and efficient state, your lordships are called upon to take from that court another jurisdiction which it has always enjoyed, and establish another tribunal, at another considerable expense to the country. You are asked, my lords, now to take from it a jurisdiction which it is peculiarly constituted to exercise; the duties of which my noble and learned friend admits, not only from the character of those called to preside in it, but also, because of its peculiar adaptation for the performance of such duties by the machinery it has at command. My lords, no one has ever brought any charge against the uprightness or the strict impartiality of the Court of Chancery; no one has ever questioned the competency of its jurisdiction; no one has quarrelled with the mode in which that

court transacts the business which is brought before it. No, my lords, the court is respected; it is competent, upright, and impartial.

But, say some, the court is inaccessible on account of the expense incurred in going there!

My noble and learned friend has to-night been making constant reference to the vast sums which certain proceedings have entailed upon charities; but no one knows better than my noble and learned friend, that the sums he has mentioned were not costs incidental to the Court of Chancery. He knew very well when he was stating them, that the sums he mentioned were the whole costs of the litigation; not the expenses incidental to the Court of Chancery, but incidental to all litigation, in whatever court. They included the cost of counsel, of attorney, witnesses, and all the other expenses incidental to litigation, whether it is in the Court of Chancery, or a court of common law. Then, my lords, I ask, is it fair in my noble friend to attribute all this expense to the Court of Chancery? Let me ask, what the peculiar expense which the Court of Chancery compels a party to pay? Do those large sums which were mentioned to frighten your lordships into giving this bill your support—do they show anything against the Court of Chancery? They show that there has been great litigation; but can my noble and learned friend show that such large sums were demanded in Court of Chancery fees? Let him tell your lordships what was the amount of fees demanded by that court,—what was the tax paid to that court by the parties; and then we shall have some knowledge of the real expenses of the court. All but the fees taken by the court are the usual expenses of litigation, and can form no part of a charge against the Court of Chancery. Those expenses must be defrayed by litigants in any case, whether they go into Chancery or into the Court of Exchequer, or Queen's Bench, or before another judicial tribunal in the shape of a commission; and to tell us what is the aggregate cost of the proceeding, is to give us no information as to what is the cost of application to any court in particular. I say, then, my lords, that it is very easy to see what this bill is: it is alleged to be a bill brought in for the purpose of saving expense to charities generally, and to smaller charities in particular; but the real proposition is to appoint one of the existing Masters in Chancery as a commissioner under its provisions. Now, my lords, I own I cannot see the charm of the separate jurisdiction thus proposed to be created. What can it signify whether a person sits in Southampton Buildings, and is called “a Master,” or whether he sits anywhere else, and is called “a Commissioner.” The individual is the same wherever he sits; he may be called “Mr. Master” in one place, and “Mr. Commissioner” in another place; but his character will not necessarily undergo any change; you may compel him to sit in two different places, but the man will be the same, and his duties will not be altered; he

would still be the same individual whether you call him "Mr. A." here, or "Mr. B." there! To me the proposal, therefore, seems an absurdity; and, my lords, it is a mere fallacy that is attempted to be foisted upon you, when you are told that by merely giving people new names, you will save so much money to the charities of the country! Are these men to be merely accountants when sitting in one place—whilst when sitting in some other place they are to be clothed with the character of judicial officers? It is a mere fallacy, my lords, to suppose that such change of character in a public officer would effect any improvement in charity affairs. But, my lords, my argument goes still further. You admit the competence—the excellence of the jurisdiction of the Court of Chancery—you admit and acknowledge the fairness, the impartiality, the strictness of the justice administered there; and that you have no other objection to that court than its expense.

Now, (said his lordship) diminish that expense—reduce those fees—make such arrangements as will enable parties to come into the Court of Chancery at as small an expense as they could go before a commissioner.

Then the parties will have justice administered in open court, by a tribunal to which no complaint can attach, and at an expense not exceeding that which must be incurred in obtaining the assistance of a commissioner sitting in private, and without any public control. And, my lords, I am happy that it is within my power to give your lordships, by an illustration, an adequate idea of my meaning—that I am able to refer you to an instance where the plan which I recommend has in some degree been accomplished with benefit to all concerned. In the consideration of a bill which was introduced during the last session by a noble duke, now sitting upon the cross benches, for facilitating the drainage of lands, it was found highly desirable—nay, indeed, necessary, to have the sanction of some tribunal, before any expense should be incurred. In order fully to ascertain what was the minimum of expense at which the sanction of the Court of Chancery could be obtained, an inquiry was set on foot. Officers of that court were consulted, and we found, that in cases where no opposition was offered, (for your lordships are aware that where there is opposition, it is impossible for any one to know where the expense may end); but in ordinary cases it was ascertained that an application can be made to the Court of Chancery for a cost of 15*l*. And what does the 15*l*. expense consist of? Why, my lords, of fees—of fees paid to the court. Then, I say, why not remit those fees altogether in such cases as are contemplated by the bill before us? Let the parties go at once into the Master's office and obtain his sanction and approval of whatever is right, without any fees whatever being charged—there can be no difficulty in that! But my lords, what is the answer

to that proposition? The objection to it when I made it before, was taken by my noble and learned friend, the Master of the Rolls, who is not now present, but who said, "These fees are a tax imposed upon the suitors before the court for the purpose of keeping up the establishment—what right have you to exonerate the parties from these fees at a probable expense to the public?" Does not my noble and learned friend, by this bill, purpose to intermeddle with these fees? Does he not reduce this tax levied upon the suitor for the purpose of keeping up this establishment? Why, my lords, is not taking away the business of the court an interference with the tax? My noble and learned friend says you must not interfere with the fees because of the Fee Fund—that fund must be kept intact, to meet the charges to which it is liable; but at the same time he says, "Take away the business of the court—erect a new tribunal for the purpose of transacting that which from time immemorial has been done by the Court of Chancery, and thereby reduce the fees which are paid into this fund." My lords, may I not ask whether the Fee Fund will not be in exactly the same predicament in the one case as in the other? If it is robbery in the one case, undoubtedly it must be quite as much robbery in the other! Take away the business, and you take away the fees, and thus you sanction the principle of remitting the fees. But "the principle?" Why, my lords, the principle has been recognised over and over again. Some years ago, my noble and learned friend adopted a plan that he promised us was to afford, and which, I am bound to say, has proved a great benefit. My noble and learned friend adopted the plan of substituting salaries for fees—the fees to be still paid by the suitors; but in place of going into the pockets of the officers, they went to the establishment of a fee fund. Very shortly that fund was considerable, it accumulated very fast, and when I acceded to the office of Lord Chancellor, I found that my predecessor had been in the habit of remitting fees. My lords, it gave me great pleasure—very great satisfaction—to find, that by means of the accumulating fund, I was able to follow the very excellent plan of my predecessor in office. I also remitted fees, and while I held the great seal, as the fee fund increased, the taxation upon the suitors diminished; and if that plan had been allowed to go on, there would now have been a great diminution in the expenses which are charged upon all suits in the Court of Chancery. Unfortunately, however, that plan of diminishing the expense to suitors has been stopped for a considerable length of time. Great burdens have been thrown upon the fee fund, and consequently no fees can be diminished. I am not going to say that the discontinuance of so good a practice is to be charged as a fault to my noble and learned friend; but I must say that I deeply regret the change which has taken place. The measure of 1841 threw a burden upon that accumulating fee fund, from which it has not recovered, and in my opinion

the time has now arrived when parliament must find it necessary and convenient to relieve the suitor in the Court of Chancery from the burden to which he is rendered liable. In my opinion, the burdens thrown upon the fee fund are not those which ought to be thrown as a tax upon the suitors in the court. It is a misfortune that very large compensations have to be paid; but, however they have arisen, I contend that they ought to form no charge upon this fee fund, and that it is necessary that the public should relieve the suitor in Chancery, not only from many of the fees now charged upon him, but also from all charges for compensation to officers.

STANDING ORDERS ON RAILWAY AND OTHER BILLS.

THAT after any road, or canal, or railway, or dock bill shall be read a first time, and before any further proceeding thereupon, there be deposited in the office of the clerk of the parliament a statement of the length and breadth of the space which is intended or sought to be taken for the proposed works, and to give up which the consent of the owners of the land has not been obtained; together with the names of such owners, and the heights above the surface of all proposed works on the ground of each such owner.

That a return shall also be presented at the same time of the names of the owners or occupiers of any houses situated within three hundred yards of the proposed works, who shall have, before the thirty-first December preceding the introduction of the bill into parliament, deposited written objections to the said railway with the public officer appointed to receive the plans of the said railway within the parish or township in which their property is situate, or, if the railway should not be proposed to be carried through that parish or township, in the one through which the railway is to pass in the manner objected to by the above-mentioned parties.

23rd Jan. 1847.

PROPERTY LAWYER.

WORDS OF DEVISE TO CARRY AN ESTATE IN FEE.

In a case lately argued in the Court of Common Pleas,⁵ a point was discussed connected with the law of real property, which may be considered deserving of a short notice.

It was an action of ejectment, and the question was, whether Richard Atkinson, the son of the testator, took an estate in fee, or for life only, in a moiety of a house devised to him by his father's will. The

father was seised in fee simple of a moiety of the house in which his son was living, and devised as follows:—"I give and bequeath to my son, Richard Atkinson, my moiety of the house which he now lives in, and all my personal property now in his keeping."

For the defendant it was admitted, that the word "estate," if it stood alone, would carry the fee simple of the property, but the word "house" could not have that effect, and the words "moiety of a house" did not convey a greater interest than the word "house." On this point, *Pettywood v. Cook*, Cro. Eliz. 52, was relied on. At the other side it was urged, that the words "my moiety" denoted the whole of the testator's interest, and are not cut down by the words that follow. *Bebb v. Penoyre*, 11 East, 160; and *Paris v. Miller*, 5 M. & Sel. 408, were cited.

The court said, the question appeared to depend upon the proper interpretation to be put upon the words "my moiety." If these words, in their ordinary signification, imported the interest the testator had in the house, then this devise would carry the whole interest he had, that is, the fee; but if the words had a narrower meaning, and imported no more than half of a house, then, undoubtedly, the devise of that half of the house would be a devise for life only. The court were of opinion that the word "moiety" carried with it the signification of the part or interest which the party took in any subject-matter, so that when a party devised his moiety, he devised his half part or interest which he has in the thing devised, and therefore determined, that the words of this devise were sufficient to carry the fee. Upon this ground there was rule absolute for a new trial.

NOTES ON EQUITY.

EXECUTOR DE SON TORT.

It does not very often happen, according to the reported cases, that persons are so imprudent as to take on themselves the important office of executor, and receive assets and pay debts, without any authority; but such cases sometimes give rise to litigation, and probably often occur without being the subject of a suit in Chancery. By way of warning, we shall advert to the principal cases in which parties so interfering have been held liable for their officiousness.

⁵ *Dea d. Atkinson v. Emcott*, 15 L. J. 244, C. P.

Thus in one of the early cases where a husband who, after the death of his wife, an executrix, had goods, which she being sole made a gift of by covin, he was charged as executor *de son tort*. *Wilcocks v. Watson*, Cro. Eliz. 405. So, if the husband of a *feme* executrix detain part only of the testator's goods, he is an executor *de son tort*. *Anon*, Cro. Eliz. 472. And if a person cancel a bond in which the intestate was bound to another, and give his own bond for the same sum, this is in the nature of payment, and may make him executor *de son tort*. *Martin v. Whipper*, Cro. Eliz. 114. It has also been held that an executor *de son tort* cannot discharge himself from an action brought by a creditor, by delivering over the effects to the rightful executor after the action has been brought. Nor can he retain for his own debt of a higher nature, by consent of the rightful executor, given after the bringing of the action by the creditor. *Curtis v. Vernon*, 3 T. R. 587; 2 H. Bla. 18. And if a lessee die intestate during the term, and a stranger enter and take possession, he thereby becomes an executor *de son tort* of the term; and if he commit waste therein, he is liable, as executor *de son tort*, to an action of waste. *Mayor of Norwich v. Johnson*, 3 Mod. 90. So, a person who intermeddles in the affairs of the deceased, under the direction of one of the executors, but who has declined to prove the will, is chargeable as executor *de son tort*. *Cottle v. Aldrich*, 1 Stark. 37. And if a woman, possessed of effects which were her husband's who is dead, uses them as her own, and after marries, and her second husband also uses them, it is *devastavit*, and they are liable to an execution at the suit of the creditors of the second husband. *Quick v. Staines*, 2 Esp. 657. It appears, also, that although a person cannot be charged as executor *de son tort*, while he acts under a power of attorney made to him by one of several executors who had proved the will, yet, if he continue to act after the death of such executor, he may be charged as executor *de son tort*, though he act under the advice of the attorney of the executor who has not proved. *Cottle v. Aldrich*, 4 Mau. & S. 175.

On the other hand, where a man possesses himself of the effects of the deceased, under the authority, and as agent for the rightful executor, he cannot be charged as executor *de son tort*. *Hall v. Elliot*, Peake, 119. And if a party receive a debt due to the estate of a person de-

ceased for the purpose of providing the funeral, he will not become chargeable as executor *de son tort*, unless he receive a greater sum than is reasonable for that purpose, regard being had to the estate and condition of the deceased, which is a question for the jury. *Camden v. Fletcher*, 4 Mee. & Wels. 378.

Where a person has received and paid monies on account of the estate of the deceased, and promptly accounted to the executor, and has been released by him, it appears that he is not responsible as an executor *de son tort*. The following were the circumstances in a case recently decided on appeal by the Lord Chancellor.^d

A decree was made by the Vice-Chancellor of England, in 1834, in a suit for the administration of a testator's estate, where the persons named as executors had renounced probate, and the widow took out administration, with the will annexed. A bill was filed by a daughter of the testator, beneficially interested, as well against her mother, as her brother, who had taken upon himself the office of executor *de son tort*. Before administration was granted to the widow, the brother had collected a considerable part of the estate in Demerara. The brother stated, that being in Demerara at the testator's death, he had collected the effects and paid the debts of the testator in the colony; but that he had, before the bill was filed, accounted for his receipts and payments to his co-defendant, and paid over to her, as administratrix, the balance. No evidence, however, was given at the hearing of the settled account, and the Vice-Chancellor made the usual decree for an account against both the defendants, with liberty to the Master to state special circumstances. After the decree the brother died, and the suit was revived against his representative. The Master gave effect to the settled account, and found that nothing was due from the brother's estate; but exceptions to his report were allowed, on the ground that the Master had no authority to treat the account as settled.

On an appeal to the Lord Chancellor, his lordship, after stating the preceding facts, said—

“It appears that the son not only paid over the amount of the property in his hands, but also accounted to the personal representative, and it is said that the result of the account is binding upon all persons claiming under the testator's will. The decree took no notice of that settlement, but directed the ordinary account against the son as being responsible to the plaintiff. The parties proceeded before the Master under that decree, and, until the time when this appeal was presented, took no steps for the purpose of altering it; but finding, on

Carmichael v. Carmichael, 2 Phill. 101.

exceptions to the Master's report, that the court considered the Master's report as not justified in treating the account as settled, they have now appealed from the decree, and ask that a direction may be introduced into it to the effect that, if the Master shall find any account to have been settled between the defendants, he is not to disturb it, except by allowing the plaintiff to surcharge and falsify."

His lordship said, this proceeded on an erroneous view of the practice of the court.

"It is quite true, that where the accountability of the defendant to the plaintiff is established, and a settled or stated account is suggested by the answer, it is the practice of the court to introduce such a direction as is now asked, because in such a case the direction does not go to the root of the accountability of the party; but, assuming him to be accountable, it merely enables the Master, in a certain event, to qualify the mode of taking the account. But here the account is alleged to have been settled, not with the plaintiff, but with a co-defendant, and the result of introducing such a direction in a case of that description would be, that there would be a decree directing accounts against two defendants, and at the same time directing the Master to inquire into a fact which, if established, would show that the court was wrong in decreeing an account against one of the defendants at all.

"Another objection to what is asked is, that it would be establishing this proposition, that an executor *de son tort*, by settling with the personal representative, can discharge himself from liability to the parties beneficially interested in the testator's estate. And before I can do that, I should require it to be shown that one personal representative can discharge another from responsibility to the parties beneficially interested, by settling accounts with him; for an executor *de son tort* is subject to all the liabilities of an ordinary executor.

"If, therefore, the case were quite new, and the suit were now before me for the first time, I should refuse the inquiry as not warranted, either by practice or principle. But if these objections had not existed, I should have hesitated long before I acceded to such an application after the length of time that has elapsed since the decree was made, without any explanation being given of the delay. For whether the inquiry was not asked for at the hearing, or, being asked for, was refused, is immaterial. In either case the party has been guilty of great negligence in not coming sooner. The introduction of inquiries of this kind into decrees is anything but a matter of course; and though the court will in a proper case do it, still it is a matter of discretion; and in this, as in all other cases of discretion, the court must take care not to destroy its jurisdiction, and defeat the general ends of justice, from a desire to do justice in a particular instance. In this case, however, the decree authorizes that which is sufficient to do justice between the parties, and bring the whole case before the court on further

directions; for the Master is to take the accounts, and to be at liberty to state any circumstances specially. And if the Master should state, as a special circumstance, that an account was settled between the co-defendants, with all the facts connected with such settlement, the court would be in a condition to determine what, under all the circumstances of the case, justice required should be done."

The appeal was dismissed with costs.

THE LAW OF DISTRESS.

DISTRESS FOR RENT, OR OF CATTLE, &c., DAMAGE FEASANT.

SIR,—The perusal of the case of *Gulliver v. Cosens*, reported 14 Law Journal, (N. S.), C. P. 215, has suggested several inquiries as to the course proper to be pursued under different circumstances by the party whose goods are distrained.

In case of a distress on either of the above grounds, one of the following propositions must apply:—

1st, The distress may be made for the exact amount of rent due or damage sustained.

2nd, It may be made for a larger amount than is really due, or on a claim for greater damages than have really been sustained.

3rd, It may be made when there is no rent due, or where the distrainor had no title to make the distress.

The case of a distress for less than is due need not be specified, as it will well come under the first head. Let us now see how a person should act in each of these proposed cases, and look a little into the law applicable to them.

First, then, if the tenant or the owner of the cattle make a tender of the rent due, or of sufficient amends for the damage sustained before the distress, the taking becomes tortious, and trespass will lie against the distrainor; *Six Carpenters' case*, 8 Rep. 147; or the owner may recover in replevin; *Gulliver v. Cosens*, *supra*. If the tender be made after the distress, but before the impounding, then the detainer only is unlawful, and the tenant or owner may bring detinue or replevin; *Six Carpenters' case*, *Evans v. Elliott*, 5 A. & E. 142. In this case, I apprehend, a reasonable amount for the costs of the distress should be tendered with the rent or damages.

There is a distinction worthy of notice between the impounding of a distress for rent, or of cattle for damage feasant. In the former case the impounding may be on the premises, under the stat. 11 Geo. 2, c. 19; *Ladd v. Thomas*, 12 A. & E. 117; in the latter there is reason to contend it must be in a public pound, per *Best, C. J.*, in *Browne v. Powell*, 4 Bing. 230. So that in case of a distress for rent there will be great difficulty in ascertaining when the goods are impounded, as it may be done immediately.

But, if the tender be not made until after the impounding, it comes too late, (at any rate in

case of a distress for rent,) and neither the distress nor the detainer is wrongful; *Six Carpenters' case*; and no action lies for continuing in possession the proper time, and selling the goods after such tender, unless, perhaps, where there has been express malice; *Ladd v. Thomas*, *supra*; *Ellis v. Taylor*, 8 M. & W. 415. Where, however, the distress is for *damage feasant*, as the distrainer only holds it as a *pledge*, and has no power to sell and reimburse himself, the owner may, after a tender of sufficient amends, maintain *detinue* for their subsequent detention; per *Tindal, C. J.*, in *Gulliver v. Cosens*.

Secondly, The remarks made under the last head as to a tender of arrears or amends will, in a great measure, apply here. If a tender of the *actual* amount due, or damages sustained, be made before the distress, the taking is rendered wrongful, as in the former case. So, if the tender be made after the distress, but before the impounding, the detainer is wrongful. But if the tender be not made till after the impounding, it likewise comes too late.

The proper remedy for an excessive distress, or a distress for a larger amount of rent than is really due, is an action on the *case*; *Taylor v. Henniker*, 12 A. & E. 488; and that, even if the goods taken were not sufficient to cover the actual arrears, and although the landlord by a second notice of distress state that it is taken for the right amount; though, of course, these circumstances would lessen the damages; *ibid*. It is not necessary, in order to maintain this action, that the tenant should suffer his goods to be actually sold; he may pay the sum claimed, and then have his action for the excessive distress; per *Denman, C. J.*, in *Skeate v. Beale*, 11 A. & E. 991 & 9 Lav J., (N. S.), Q. B., 233. But it must be carefully borne in mind, that in no case can money paid under an excessive or wrongful distress be recovered back in an action for *money had and received*; *Lindon v. Hooper*, Cowp. 414; *Knibbs v. Hall*, 1 Esp. N. P. C. 84; *Skeate v. Beale*, and *Gulliver v. Cosens*, *supra*. The only instance that I am aware of in which this has been done is in the case of *Briggs v. Sowry*, 8 M. & W. 729. But here the opinion of the court was taken by consent on facts stated in a special case in which the point was not raised. It would be useless to *replevy* goods seized under an excessive distress where no tender had been made previously to their being impounded; for there being *some* rent in arrear, the defendant would have judgment, and the plaintiff, of course, be saddled with the costs. Still it is a remedy suggested both in the *Six Carpenter's case*, and in *Gulliver v. Cosens*. The proper course seems to be, after tendering the correct amount, to pay the sum demanded, under protest, and then bring your action (on the case) for the excessive distress. By this means you gain immediate possession of the goods.

Where the distress is for *damage feasant*, and the distrainer claims more than the owner thinks him entitled to, his proper course, if the cattle have been impounded, is (as under the first head) to tender amends, and on refusal,

to bring his action of *detinue*; here the proof of the sufficiency of the amends rests, as it ought to do, with the plaintiff; *Gulliver v. Cosens*. Case does not lie for such detention; *Anscombe v. Share*, 1 Camp. 285; *Sheriff v. James*, 1 Bing. 341. Nor could money paid to obtain possession of the distress be recovered in an action for *money had and received*.

Thirdly, Little need be said under this head. The proper remedy is an action of *trespass*. *Detinue* and *trover* may also be maintained; and the goods or cattle may be successfully *replevied*, either before or after the impounding. It must still be remembered, that money paid to get rid of such a distress cannot be recovered as money had and received. However, if the goods wrongfully taken have been sold, the owner may waive the tort and recover their value in such action. But if a party pay money in order to redeem his goods from a wrongful distress for rent, he may maintain *trover* against the wrong doer; *Shipwick v. Blanchard*, 6 T. R. 298; as also, I apprehend, *trespass*, and recover the amount so paid in damages.

There are cases in which actions are maintainable for *irregularity* in making the distress, but the consideration of these is foreign to my present purpose.

I should feel indebted to yourself, or any of your correspondents, by being informed if I am incorrect in any of my several conclusions.

300.

RESULT OF THE HILARY TERM EXAMINATION.

THE printed list of applicants for admission on the Rolls of Attorneys in Hilary Term, contained the names of no less than . . . 157
Including persons previously examined . . . 55

102

Adding three to be examined, who had not given notices of admission, and one under a judge's order . . . 4

Deducting one who had given an admission but not an examination notice . . . 1

3

To be examined . . . 105

Of these many omitted to deliver testimonials of service, namely . . . 25

Absent on the day of examination . . . 1

Withdrew . . . 1

Not passed . . . 5

32

Number passed . . . 73

The examiners were Master Bunce, Mr. Amory, Mr. Austen, Mr. Clayton, and Mr. Co-verdale.

LEGAL OBITUARY.

1846, Dec. 11.—At Halifax, Nova Scotia, Norman Fitzgerald Uniacke, aged 69. He was for many years Attorney-General of Lower Canada, a representative in the General Assembly, and Judge of the Supreme Court of that Colony. He was called to the Bar by the Society of Lincoln's Inn, the 11th Feb. 1805.

Dec. 22.—Stevens Wade Henslow, solicitor, aged 43. Admitted on the Roll, Hilary, 1826.

Dec. 30.—At Hurst Green, Sussex, in his 32nd year, Charles Selby Fallowdown, solicitor, of Paper Buildings, Temple. Admitted on the Roll, Easter, 1841.

1847, Jan. 3. — At Sydenham, in his 81st year, George Chilton, Esq., late one of the Masters of her Majesty's Court of Exchequer.

Jan. 8.—At Sherwood Lodge, Battersea, in the 83rd year of his age, the Right Hon. Sir Edward Hyde East, Bart., formerly Chief Justice of the Supreme Court at Calcutta. He was called to the Bar by the Inner Temple, 10th Nov. 1786.

Jan. 20.—William Braithwaite, of Serjeant's Inn, Fleet Street, solicitor. Admitted on the Roll, Hilary, 1837.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF ATTORNEYS AND COSTS.

ACCUMULATION FUND.

A fund arisen from accumulations of a testator's estate made after the period prescribed by the Thellusson Act, was claimed by the residuary legatees, and by the next of kin, adversely to each other. The court decided in favour of the next of kin, and ordered the costs of suit to be paid out of the fund composed of the capital of the residue and the lawful accumulation, and out of the fund in dispute, *pro rata*. *Elborne v. Goode*, 14 Sim. 165.

Cases cited in the judgment: *Ripley v. Moysey*, 1 Koen, 578; *Nisbett v. Murray*, 5 Ves. 149-158; *Ackroyd v. Smithson*, in *Eyre v. Marsden*, 4 My. & Cr. 245; in *Roberts v. Walker*, 1 Russ. & Myl. 752-767; *Cresswell v. Cheslyn*, 2 Eden, 123, 1 Swant. 571, n.

AGREEMENT.

See *Lease*.

ADMINISTRATOR.

See *Limited Administrator*.

BROKER'S COMMISSION.

Transfer into court.—A party who had been ordered to transfer large sums of stock into court, paid the broker at the rate of 1s. 3d. per cent., for identifying him on making the transfer. Held, that the payment (which amounted to

28l. 2s. 6d.,) was proper, and ought to be allowed in taxing the party's costs. *Davenport v. Powell*, 14 Sim. 275.

CHARGING ORDER.

A charging order nisi was obtained under the 1 & 2 Vict. c. 110, on stock belonging to A. B., who thereupon paid the amount, but disputed his liability to pay the costs of obtaining the order. On the day for showing cause the case was mentioned, when A. B. was held liable to pay the costs of both applications. As to the possibility of charging, under the 1 & 2 Vict. c. 110, a part only of a sum of stock standing in the name of a debtor. *Stanley v. Bond*, 8 Beav. 50.

CHARITY.

The defendant in a charity information who had been ordered to pay the costs of the Attorney-General, and of trustees being insolvent and unable to pay, such costs were ordered to be paid out of the charity estate. *Attorney-General v. Lewis*, 8 Beav. 179.

CONTEMPT.

It is not irregular to engraft upon an order of commitment an order that the party committed shall pay the costs of his contempt; but if the order extend to charges and expenses as well as costs, it is to that extent irregular. *Van Sandan, ex parte*, 1 Phill. 605.

Cases cited in the judgment: *Bullen v. Ovey*, 16 Ves. 141; *Leonard v. Attwell*, 17 Ves. 385.

DEED OF COMPOSITION.

A person, being embarrassed in his circumstances, enters into a composition with his creditors, one of whom is his solicitor. The solicitor prepares and (with the debtor and the other creditors) executes the deed of composition, by the terms of which the debtor is to pay 1,500*l.* to his creditors by instalments, and to insure his life for that amount, and, on failure of such payment and insurance, the deed is to be void. There is no evidence that the solicitor ever explained to his client the nature of the legal and equitable obligations imposed on him by the deed, or ever instructed him that the covenants in it were to be strictly performed, or that he, the solicitor, was bound by it; but there is evidence of a private understanding between the solicitor and the client, that the solicitor, notwithstanding the deed, shall be paid in full. The debtor fails to insure his life for the whole 1,500*l.* His solicitor cannot, as between himself and his client, insist upon this failure as ground for avoiding the deed. *Watts v. Hyde*, 2 Coll. 368.

DELIVERY OF BILL.

Signing.—Delivery of a bill of costs to an agent of the client appointed for that purpose, held sufficient.

Delivery of a bill of costs, unsigned, but accompanied by a letter signed by the solicitor, and referring to the bills, held a sufficient compliance with the 6 & 7 Vict. c. 73, s. 3*l.* *Bush, in re*, 8 Beav. 66.

DISCLAIMER.

A trustee, who was required [by the bill to answer certain interrogatories, answered them and disclaimed: *Held*, that he was only entitled to the costs of the disclaimer. *Murphy v. O'Shea*, 8 Ir. Eq. Rep. 329.

FUTURE COSTS.

See *Security*.

INTERPLEADER.

A. lodged money of *B.*'s at a bank, and took a deposit receipt in the name of *B.*, and afterwards lodged a small sum additional and took a receipt for the whole by *B.*'s authority, in the name of *B.*'s daughter *X.*, stating it was a provision for her. After *B.*'s death *A.* refused to give the deposit receipt to *X.*, and set up a claim to the money as *B.*'s administrator; and the bank refused to pay *X.* without the receipt, both *X.* and *A.* brought actions against them. *Held*, that the effect of the dealing was conclusively to constitute the bank the debtor of *X.* only, and that they could not sustain an interpleader suit.

A bill of interpleader cannot be sustained if the claims of one defendant is not at least colorable.

A defendant against whom a bill is dismissed, cannot be made to pay costs, though the suit is caused solely by his misconduct. *Cochrane v. O'Brien*, 8 Ir. Eq. Rep. 241.

JURISDICTION BY PETITION.

1. Settlement of a bill of costs between a solicitor and client upon a special agreement, precludes an order being made upon petition for taxation: the agreement must first be set aside before the matter can be re-opened. *Whitcombe, in re*, 8 Beav. 140.

2. The amount of a bill of costs was included in a settled account between a solicitor and client, and retained by the solicitor out of monies in hand: *Held*, that the court had not jurisdiction, upon petition under the 6 & 7 Vict. c. 75, to open the account and order taxation, and that it could only be done by a bill.

A special petition was presented for the taxation of two bills; it succeeded only as to one, as to which the order might have been obtained as of course. The petitioner was ordered to pay all the costs. *Barwell v. Brooks*, 8 Beav. 121.

JURISDICTION OF VICE-CHANCELLORS.

Under the Solicitors' Act, (6 & 7 Vict. c. 73), references for taxation may be made by the Vice-Chancellors as well as by the Lord Chancellor and Master of the Rolls. *Carew, in re*, 8 Beav. 128.

LEASE.

Agreement.—Lessee of a house and fixtures agreed to pay the expense of preparing the agreement: *Held*, that he was liable to pay the costs of preparing, and of copies of an inventory of the fixtures referred to by the agreement. *Thomas, in re*, 8 Beav. 145.

LIMITED ADMINISTRATOR.

An administrator cannot relinquish the

costs of a suit, for a limited administrator cannot renounce any benefit to which his intestate's estate is entitled. *Davis v. Chanter*, 14 Sim. 212.

MOTIONS ABANDONED OR REFUSED.

A motion which has been opened cannot be afterwards treated by the party moving as an abandoned motion; but the parties opposing are entitled to costs on a motion refused. *Dugdale v. Johnson*, 5 Hare, 92.

PETITION TO TAX.

See *Jurisdiction*.

REFERENCE. *

A reference was made as to the title of property sold in the suit. Exceptions were taken to the Master's report, and were partly allowed, and on a reference back the title was found good: *Held*, that the court could not, on motion, adjudicate on the question of the costs of the reference.

The report of *Camden v. Benson*,¹ 1 Keen, 671, stated to be inaccurate. *Flower v. Har-topp*, 8 Beav. 199.

RETAINER.

Solicitors employed in a suit, and a prosecution arising thereon, delivered two bills. The surviving plaintiffs obtained an order for the taxation of the bills, submitting to pay what was due "on the taxation of their said bills;" before the taxing master they disputed their retainer in the prosecution. The Master having completed the taxation, they presented a petition, praying that they might be ordered to pay the first bill only, and that, if necessary, the Master's certificate and the order for taxation might be varied. The petition dismissed with costs. *Springall, in re*, 8 Beav. 63.

REVIVOR FOR COSTS.

As a general rule, there can be no revivor for untaxed costs, whether the abatement is occasioned by the death of the party who is to pay the costs, or by the death of the party who is to receive them. The rule is not affected by the 3 & 4 Vict. c. 105, s. 27.

Cases of *Morgan v. Scudamore*, 2 Ves. jun., 313; 3 Ves. 195; and *Barry v. Stawell*, 3 Ir. Eq. Rep. 18, 146, considered and commented on. *Bowyer v. Beamish*, 8 Ir. Eq. Rep. 63.

SECURITY FOR FUTURE COSTS.

Quære, whether the contract to pay future costs out of the deposits was illegal, as between the solicitor and client, attending to the fact, that the client, being a trustee, might properly stipulate that he should not be personally liable for the costs to be incurred, but that the same should be paid exclusively out of the trust-fund. *Parsons v. Spooner*, 5 Hare, 102.

SHORT-HAND WRITERS' NOTES.

In taxing the costs of a motion for a new trial of an issue, the costs of copies of the short-hand writer's notes of the evidence taken on the former trial are in the discretion of the taxing master, regard being had to the nature

of the issue and the extent to which such copies, if at all, were necessary, but in no case will more than two copies be allowed. *Malins v. Price*, 1 Phill. 590.

SIGNING BILL OF COSTS.

See *Delivery of Bill*.

TAXATION.

Solicitor engaged for various parties.—Parties agreed to compromise a suit, and that the "costs, charges, and expenses, as between solicitor and client," should be paid out of the fund. *Held*, that the taxing-master ought to treat the suit as properly constituted, and ought not, in the taxation, to consider, whether defendants having interests similar to the plaintiffs, should not have been made co-plaintiffs; and, secondly, that if any of the parties entering into the compromise intended to challenge the propriety of the constitution of the suit, they ought to have distinctly stated, and have provided for it in the agreement.

Observations on the imperfect mode, in practice, in which solicitors are remunerated for their services.

By the practice of the court, solicitors are often not paid at all, or very ill paid, for very important services, and therefore, they ought not to be deprived of any lawful fees which the practice warrants, upon the notion that the business charged may have been of no practical benefit. Thus, where a solicitor acts for a plaintiff and for some defendants, he is entitled to charge such defendants for the plaintiff's warrants served on his clients the defendants, and for attendance thereon, and for separate copies of the proceedings.

Quere, whether the retainer of a counsel in a cause ceases upon his being appointed Queen's counsel.

Costs of a case laid before counsel as to a supplemental bill, and costs of a consultation between a new junior and the former junior who had been promoted, allowed in a taxation as between solicitor and client. *Lucas v. Peacock*, 8 Beav. 1.

2. *After payment*.—Petition to tax a bill of costs after payment, on the ground of trifling overcharges, dismissed, but without costs. *Drake, in re*, 8 Beav. 123.

3. *After payment*.—After payment, an *ex parte* order for taxation is irregular, and the same rule applies where the payment is made by a mortgagee, and the taxation is at the instance of the mortgagor as the party ultimately "liable to pay." *Carew, in re*, 8 Beav. 150.

4. *After a month*.—After the expiration of a month from the delivery of a bill of costs, and before the expiration of twelve months, an order of course may be obtained for taxation. *Holland v. Gwynne*, 8 Beav. 124.

5. *Delivery of papers*.—A client who has employed a solicitor in several matters, obtained an order of course for the taxation of the costs of one matter only, with a direction, that on payment, the solicitor should deliver all the papers belonging to the client. It was dis-

charged with costs for irregularity. *Holland v. Gwynne*, 8 Beav. 124.

6. *Gross sum for costs*.—An agreement by a solicitor to take a gross sum from his client in lieu of costs is not void, though regarded by the court with jealousy. *Whitcombe, in re*, 8 Beav. 140.

TRUSTEES.

Copyhold.—*Costs of admittance*.—Devise of a copyhold estate to three trustees upon trust to permit A. to occupy the same or receive the rents and profits thereof for his life; and after the death of A., upon trust to sell the estate and divide the proceeds amongst the children of A.; and gift of the testator's residuary estate to the trustees upon other trusts, but charged with debts and the costs and charges of proving and executing the will: *Held*, that the fines payable on the admission of the devisees in trust to the copyhold estate were not part of the costs and charges of executing the will to be borne by the residuary estate, but that such expenses of admission were a charge upon the copyhold estate so devised. *Cole v. Jealous*, 5 Hare, 51.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Brown v. Robertson. Dec. 16th, 1846.

ORDER OBTAINED ON INCORRECT AFFIDAVIT.—SERVICE OF NOTICE OF MOTION

An order obtained upon an affidavit of service of notice of motion, but which service afterwards appears to have been irregular, will be discharged with costs.

THIS was a motion to discharge an order of the Vice-Chancellor of England dismissing with costs a notice of motion by one of the defendants to discharge his Honour's order for the appointment of a receiver in this cause, and also, to discharge the last-mentioned order.

Mr. Teed, for the defendant, Robertson, stated, that since the dismissal of the application to the Vice-Chancellor, an affidavit had been filed, from which it appeared that his Honour's order appointing the receiver had been made upon an incorrect affidavit of service of motion by the plaintiffs. The latter notice of motion for Thursday, the 4th of June, had not been served upon defendant's town agent until ten o'clock at night on Monday, the 21st of June. By the 22nd of the Orders of October, 1842, notices, &c., served after 8 o'clock in the evening are to be deemed to have been served on the following day; hence, in the present case there were not the two clear days required by the New Orders of May, 1845, No. 16, Art. 47, between the service of such notice and the day therein named for hearing the motion. The country solicitor in this case appeared in court on the Thursday,

and stated that he had not had time to instruct counsel, but nevertheless the order was made, the Vice-Chancellor deeming, as it was believed, that his appearance waived any irregularity of service.

Mr. J. Parker and Mr. Bazalgette for the plaintiff contended, that as this objection had not been taken before his honour on the defendant's motion to dismiss the said order upon which occasion the appointment of the receiver had been confirmed on the merits, the defendant had by his subsequent conduct waived the irregularity.

The Lord Chancellor said, that the order appointing the receiver having been obtained upon an incorrect, not to say false affidavit of service of notice, and as it were *ex parte*, it clearly could not stand. It was a very important case, and the motion must be allowed.

Mr. Parker suggested, that no costs would be given for the discussion of the unsuccessful motion before his Honour to discharge the order, as the defendant had rested his case on the merits, and filed long affidavits in support; but his lordship remarked, that he could not discriminate between what might and what might not have been necessary, and therefore, decreed the costs in the court below and of the present application to this defendant and the others (represented by Mr. Southgate) who had been served.

Richardson v. Moore. Dec. 22nd, 1846.

ORDER TO STAY PROCEEDINGS.

An order to stay proceedings and pay the costs, obtained ex parte and without notice, is irregular.

THE facts are reported in the last volume of the L. O., p. 516.

Mr. Cooper and Mr. Daniel now appealed from the order of Vice-Chancellor Knight Bruce, made on the 27th of July last, and whereby his Honour directed that all the proceedings against the defendant should be stayed until further order, and that the costs should be paid as before directed.

Mr. Toller supported the order.

The Lord Chancellor remarked, that there were several objections to it, but one irregularity in it was fatal. The order had been obtained against the plaintiff behind his back and without notice to him. It therefore could not be supported, and must be rescinded with costs.

Smith v. Guy. Branwin v. Guy. Dec. 17, 1846.

CREDITORS' SUITS.—INTERVENTION OF STRANGER.—TRANSFER OF CAUSES.

The court will not change the conduct of inquiries in the Master's office in a creditor's suit upon the application of a stranger to that suit.

If causes in different courts are to be trans-

ferred to one judge, the general rule is to transfer into that court in which a decree was first made.

Two bills had been filed relative to the estate of a certain testator against the defendant as administrator, with the will annexed, of the said testator's surviving devisee in trust. The first had been set down before the Vice-Chancellor of England, and was a simple creditor's suit. The second before Vice-Chancellor Wigram, was also a creditor's bill, but involved many complicated circumstances, and alleged misappropriation of trust funds by the testator's devisees in trust. The decree in *Smith v. Guy* was in the ordinary form, with the addition that the Master should be at liberty to adopt any of the accounts directed by the decree in *Branwin v. Guy*; the decree in the latter suit having been obtained prior to that in the former.

Mr. Rolt, (with whom was Mr. Toller,) upon the grounds of the expense and inconvenience of separate inquiries and reports of different Masters in respect of the same estate; the great contrariety of interests between the respective plaintiffs; the alleged friendliness of the defendant's answer to the bill of the plaintiff, Branwin, and the consequent facility of admitting proof of debts to the prejudice of the plaintiff, Smith; moved on behalf of the latter, to the effect that the administration of one of the suits might be stayed, and that the plaintiff, Smith, might have the conduct of the proceedings in the other; or, that such order might be made as would enable the accounts to be taken before all parties, and thus prevent two decrees. It was admitted that the parties in the first cause had been hitherto served with all warrants to attend proceedings in the second, but there was no security that such courtesy would be continued. Smith had not proved as a creditor in the last suit.

The Lord Chancellor, without hearing the other side, said it was a new doctrine to ask the court to interfere with proceedings under a decree in a suit at the interposition of an applicant who was a stranger to that suit. It was certainly very desirable to save the expense of double proceedings, and an order might be made to refer both causes to the same Master, with liberty for the plaintiff, Smith, to attend the proceedings. If the parties wished it, one of the causes might be transferred to the court in which the other was set down; and the regular practice was to transfer to that court in which a decree had been first pronounced. Costs of the application to be costs in the cause.

Mr. Craig asked to which of the causes were the costs of the defendant, Guy, who appeared in both, to be referred; but his lordship made no order in respect of them, intimating that they would be paid out of any funds which might be brought into court.

Rolls Court.

Robinson v. Wall. January 16, 1847.

COSTS.—BILL OF DISCOVERY.—ORDER 125 OF ORDERS OF 1845.

It is not a sufficient reason for refusing to a successful defendant the costs of a bill of discovery, that he has asked for a discovery of many matters of which he has not been able to make use in his defence.

IN this cause a question was raised on further directions, as to the costs of a bill of discovery filed by one of the defendants. The suit was for specific performance. By his bill the defendant asked for a discovery of various alleged grounds of defence; namely, the employment of puffers, and the want of a title in the vendors, none of which turned out to be available, as well as of one upon which the suit was ultimately decided in his favour. It was alleged, on the part of the plaintiff, that an immense mass of unnecessary matter, in consequence of these allegations, in respect to which the defendant had not made out his case, had been put upon the file; and that the costs thus occasioned, under the 125th Order of 1841, ought not to be allowed.

Mr. *Kindersley* and Mr. *Chandless* for the disallowance of the costs.

Mr. *Turner* and Mr. *Daniel* were on the other side; but

Lord *Langdale*, without calling upon them, said that the general orders gave the court a discretion, as to costs in the case of a bill of discovery; but he did not agree with the proposition, that the costs ought to be given only where the discovery had been made use of. There might be many cases in which the requiring the discovery might be very proper, while yet it might turn out that no useful discovery could be obtained. A plaintiff who filed a bill which he could not sustain might drive the defendant to file a bill of discovery, not knowing what the facts really were. There was no reason here to think that this bill had not been filed *bona fide*, and therefore the costs must follow the event of the original suit.

Vice-Chancellor of England.

Combes v. Ramsay. January 21, 1847.

BILL, AMOUNT OF.—CONSTRUCTION OF 68TH ORDER OF MAY, 1845.—DUE DILIGENCE.

After an application to amend, under the 68th Order of May, 1845, has been refused by the Master, and the Master's decision has been affirmed on appeal, the plaintiff is at liberty to renew his application to the Master, on fresh evidence, and to appeal again to the court.

If a plaintiff can show a reasonable ground for delaying his application, in consequence of his expecting further information from some proceeding in another suit, the exigency of the order, as to due diligence, will have been complied with.

THIS was an appeal motion from a decision of Master *Farrer*, for leave to amend the original and supplemental bills in the above cause, the Master having refused the application. A similar application was made in December last, which was also refused, and on appeal to his Honour the Vice-Chancellor of England, the judgment of the Master was affirmed. From the judgment of his Honour the plaintiff appealed to the Lord Chancellor, but his lordship refused to hear the appeal, on the ground that, according to the stat. 3 & 4 W. 4, c. 94, s. 13, and the construction put upon that statute in *Christ's Hospital v. Grainger*, 1 Phil. 634, the appeal to the Vice-Chancellor was final.*

A further affidavit was then filed in order to meet the objection suggested by his Honour in his judgment, and the application was renewed before the Master, and refused, whereupon an appeal was made to the Chancellor, under the above section of the 3 & 4 W. 4, c. 94, which authorises an appeal to the Lord Chancellor, Master of the Rolls, or Vice-Chancellor; but his lordship refused to hear it, on the ground, that having authority under the act creating the new Vice-Chancellors, to transfer causes to them, and having determined not to hear original causes, the application was not properly made to him. Hence the present application.

The reasons alleged for the application were shortly these:—The original bill was filed for the redemption of an estate charged with an annuity against the trustee and personal representatives of the annuitant, and the trustee under the annuity deed, having, shortly after the bill was filed, sold and conveyed the property to four other parties, a supplemental bill was filed in July, 1845, making the purchasers defendants to the suit. In August, 1845, the trustee put in his answer, and as a bar to the plaintiff's claim, stated, that in 1826 a decree of foreclosure had been obtained upon a mortgage executed by the party through whom the plaintiff claimed. In August following, the purchasers and the trustee put in their answer; but the personal representative of the annuitant did not put in her answer till May, 1846. On the answer of the trustee being laid before counsel, he advised that a fresh suit should be instituted for the purpose of getting rid of the decree of foreclosure which it was alleged had been opened by a subsequent satisfaction of the mortgage debt. A bill was accordingly filed by the same plaintiff in April, 1846, against the personal representatives of the mortgagee, praying to have the decree of foreclosure reversed, and for a reconveyance; and the principal defendant to this bill filed a demurrer, which was overruled, and afterwards obtained several orders for time to answer, so that the plaintiff had been unable to obtain his answer until December last. The answer of the personal representative of the annuitant to the supplemental bill was put in on the 7th of May, 1846, so that the time for amending ex-

* For the hearing before the Chancellor see 33 Leg. Obs., p. 164.

pired on the 27th of July. It was proved by the affidavits in support of the application, that before the time expired, counsel was consulted as to amending, but that he advised the accounts should not be settled until after the answer had been obtained to the bill for setting aside the decree of foreclosure. The defendants, however, having intimated their intention to move to dismiss, the accounts were settled, and a warrant was taken out before the Master for leave to amend on the 2d of November last, when the applicator was refused as above mentioned.

Mr. Cooper and Mr. Miller in support of the appeal.

Mr. Spence, Mr. Stinton, and Mr. Jervis, contra.

The Vice-Chancellor said, that as there appeared to have been good grounds for waiting until the answer to the bill to set aside the foreclosure had come in, he should grant the application, if the plaintiff's counsel, on looking through that answer, should consider that it rendered an amendment necessary.

Queen's Bench.

(Before the Four Judges.)

In re Shuttleworth. Michaelmas Term, 1846.

LUNATIC.—ORDER.—MEDICAL CERTIFICATE.

An order for the detention of a lunatic under the 8 & 9 Vict. s. 100, s. 45, is good, although all the particulars enumerated in the form annexed to the act are not set out if the act is substantially complied with.

The form of a medical certificate given in schedule C. is directory only, and an equivalent will suffice. A statement in a certificate, that a lunatic "labours under delusions of various kinds, and is dirty and indecent in the extreme," is a sufficient statement; and in another certificate, a statement that the medical man forms his opinion from conversations with the lunatic, without describing their purport, was held sufficient.

A FEMALE lunatic confined in a private asylum was brought up by habeas corpus for the purpose of being discharged. The order under which she was confined was made under the 8 & 9 Vict. c. 100, s. 45. All the particulars required by the form given in the act were not filled up, and the reason for the omission was stated to be, that the lunatic was watched by an attendant whom she feared. The statute also requires two medical certificates to be given, in which the medical man is required to state the facts upon which he has formed his opinion. They were as follows:—

"I, Thomas Willmott, being a surgeon and apothecary duly qualified, hereby certify, that I have this day, separately from any other medical practitioner, visited and personally examined M. E. R., the person named in the accompanying statement and order, and that she is a per-

son of unsound mind, and a proper person to be confined; and that I have formed this opinion from the following fact, that she labours under delusions of various kinds, and that she is dirty and indecent in the extreme.

(Signed) "THOMAS WILLMOTT."

The other certificate followed the same form, but stated—"I have formed this opinion from conversation I have this day had with the said M. E. R.

(Signed) "WILLIAM GRIFFITH."

Mr. Parry moved that the lunatic might be discharged. He contended that the order was bad because all the particulars required by the 8 & 9 Vict. c. 100, s. 45, respecting the state of the lunatic had not been given. And that the certificates were defective because they did not comply with the 46th section in stating "any fact or facts" upon which the opinion of the medical man has been formed. In *In re Fell*, a general statement was held an insufficient statement of facts on which the opinion of insanity had been formed.

Sir John Bayley contra was not heard.

Lord Denman, C. J. The case appears to me entirely unexceptionable. It is said that the act of parliament is peculiar in its terms, and that those terms must be exactly observed, and that no person should have a right to send another to an asylum unless the order contained all the particulars which are set forth in a form of order contained in the act. The question which first presents itself is, whether the requisite statements do or do not sufficiently appear in this order. In my opinion they do. The statement with respect to the religion of the lunatic was made to the full extent of the knowledge of the person who made it. He said that she had no religious opinions or belief, that he knew of; and this appeared to be all that it was possible for him to say. Then, with respect to the statement of the previous history of the person, there was a reasonable and sufficient excuse given for not going into the minute particulars of that history; and, if any one had long exercised a particular influence over the deranged mind of another, it was impossible to expect that, in all respects whatever, a third party should be able to give a minute account of the former history of the deranged person. In this instance it would be particularly difficult, for it is stated that she was in a constant state of alarm from one unceasingly watching her. As to the first certificate, the language of the 46th section gives the form of it, and the previous section enacts that any such certificate shall contain certain particulars. These provisions are more directory than essential, and they are sufficiently complied with if parties state all that they have been enabled to know of the state of the persons with respect to whom they are about to put the act in force. Then, as to the first certificate, the medical man states that, in his opinion, this woman required to be put under the care of some one, for, he says

she laboured under certain delusions, and was dirty and indecent in the extreme. It is monstrous to expect that all the particulars of these delusions should be stated. It is enough if skilful persons state that what they deem to be delusions existed, for among them the nature of such delusions is well understood. The latter clause of the certificate, that the lunatic was dirty and indecent in the extreme, is itself sufficient to indicate the existence of a delusion which put her into a state to require protection, and the statement of the particulars might be such as only to disgust all that read them. The second certificate does not quite follow the act of parliament. This is to be regretted. If it had, the question raised might have been avoided. Still, if it states what, in substance, is equivalent to the form given in the act, it is sufficient. None of these certificates are final. The object of them is only to put things in a train of inquiry; and with respect to the nature of the facts to be stated, the object was to point out the sources from which they were derived, so as to make that inquiry the more easy, and not to enter into particulars on which those who read them might not be able to form any satisfactory opinion. It seems to me that in those respects the certificate has substantially complied with all that was required. But the court would not be justified in setting at liberty a person still in such a state as to be dangerous to the public and to herself. It seems to me that the court would be abusing the very name of liberty if it said, "let this woman be restored to liberty," when it could only be a curse to herself and to others.

Coleridge, Wightman, and Erle, J.s., concurred.

Rule discharged.

The Queen v. The Inhabitants of St. Anne, Westminster. Hilary Term, 1847.

PRACTICE.—SESSION.—CASE RESERVED.

A case is reserved by the quarter sessions for the opinion of this court, and after the certiorari has issued, to bring up the order, examination, &c., an application is made to the court to be allowed to take an additional objection to the order, when the case comes on for argument.

Held, that the court would only hear argument on the points reserved by the sessions.

The party, at whose instance a case is granted by the sessions, must either rely on the points so reserved, or abandon the case and rely on any other point which may be thought available.

On appeal against an order of a metropolitan magistrate, for the removal of a pauper from the parish of St. Pancras to the parish of St. Anne, Westminster, the sessions confirmed the order, subject to a case which raised two points for the consideration of the court. After the certiorari to bring up the order of sessions, examinations, &c., issued on the

23rd of April, 1846, an application was made in the Bail Court by Mr. Pashley, and granted, that when the case came on to be heard in the Crown Paper, that he might be allowed to take an objection to the order of removal, in addition to and independent of the grounds appearing by the case reserved by the sessions. After the case reserved had been argued,

Mr. Pashley submitted, on the authority of the rule of practice laid down in the case of *Regina v. Heyon*,^b that he had a right to be heard on the objection subsequently taken to the validity of the order of removal.

Cur. adv. vult.

Lord Denman, C. J. The court is of opinion, that the correct rule on this subject was laid down by Lord Ellenborough in *Rex v. Guilford*,^c and that we cannot hear this objection to the order of removal. The sessions heard and decided the appeal, reserving certain questions for the opinion of this court. The party at whose instance the case was granted, must either proceed with the case reserved, waiving any other objections to the order of removal, or must abandon the case and rely on any other objections which may be thought available. To prevent any doubt, we shall direct a rule to be drawn up that will settle the practice in conformity with our opinion.

Queen's Bench Practice Court.

Jones v. Davis. Jan. 18th, 1847.

(*Coram Erle, J.*)

MOTION TO SET ASIDE AN APPEARANCE WHICH HAD BEEN ENTERED FOR DEFENDANT SEC. STAT. AND SUBSEQUENT PROCEEDINGS, WHEN TOO LATE.

The goods of a defendant (for whom an appearance had been entered sec. stat., and judgment signed for want of a plea) were seized in execution under a fi. fa. on the 23d of December. On the 18th of January a motion was made to set aside the appearance and subsequent proceedings, on the ground that the defendant had never been served with any process, and that the levy was the first intimation he had that any action had been brought against him: Held, that this application was made too late.

Hawkins moved for a rule calling upon the plaintiff to show cause why the appearance that had been entered herein sec. stat. and all subsequent proceedings should not be set aside for irregularity with costs. The ground on which the motion was made was, that the defendant had never been served with any process, and that the first notice that he had of any proceedings had been taken against him was on the 23d of December last, when his goods were seized under a fi. fa. for 18l.; the

^b 31 L. O. 577, and 2 New Session Cases, 170.
^c 2 Chit. R. 284.

appearance had been entered *sec. stat.* and judgment signed for want of a plea.

Erle, J. This motion is made too late. Why has the defendant let so long a period pass? It appears that his goods were taken in execution twenty days before Term, and the probability is that the bailiff has paid over the money.

Hawkins. Distinct notice was given to the bailiff that this motion would be made to the court.

Erle, J. That is done in very many cases, and nothing further is done in the matter. Now, if this rule was made absolute, the sheriff might be made liable, after having done what he was bound to do by the writ, and after he has in all probability paid over the money. This is a position in which he ought not to be placed by the unreasonable delay of the defendant. Therefore, on the present facts, as stated, I think the rule ought to be refused.

Rule refused.

Common Pleas.

Hambidge v. De La Cruet and Francois. Michaelmas Term, Nov. 25, 1846.

ENTERING APPEARANCE. — AUTHORITY OF PARTNER. — PROCEEDINGS SET ASIDE.

One partner has no authority to direct an appearance to be entered for his co-partner, in an action against them jointly as partners, and where an appearance has been so entered with the knowledge of the plaintiff's attorney, the court will set aside the proceedings with costs.

In this case an order had been made by *Erle, J.*, directing that the appearance entered for Francois with the other defendants, and all subsequent proceedings, should be set aside, with costs to be paid by the plaintiff. That the defendant Francois should be discharged out of custody, if within four days he paid into court the sum of 57l. 5s., which sum was to be paid to the plaintiff in case the court should set aside the order as to the discharge of Francois, and he was not rendered to gaol within four days after; but in case the order was not set aside, or the defendant rendered to gaol, then that sum was to be returned to Francois. To set aside this order, a rule *nisi* had been obtained on a former day of the term, and the facts of the case appeared to be these:—The two defendants had been partners up to 1844, when they dissolved partnership, and as partners they were sued in the present action; the writ of summons, however, having been served upon De La Cruet only. When so served the latter alone went, and for himself and Francois obtained time from the plaintiff's attorney, upon the terms of a judge's order for the debt and costs being given. To effect this the plaintiff's attorney went with and introduced De La Cruet to another attorney, whom the latter instructed to appear for Francois and consent to the judge's order. Default was afterwards made in the performance of that order, and in pursu-

ance of its terms judgment had been signed, and Francois taken in execution for the sum of 57l. 5s., whereupon the above order of *Erle, J.* was made.

Wise now showed cause, and submitted, that one partner had not at any time authority to enter an appearance or confess judgment for another. The court then called on the other side to answer that objection.

Allen, Serjeant, (Ball with him.) contra. On principle one partner has authority to direct an appearance to be entered for his co-partner. But at all events, if that be not so, the only remedy was by an action against the attorney who entered the appearance.

Maule, J. That attorney here appears to be a perfect stranger to the defendant Francois, and is the latter to continue in custody until he has recovered in an action against such attorney?

Allen, Serjeant. There would be an equal hardship on the plaintiff in holding otherwise. The cases of *Rex v. Addington*, Say. 259, and *Stanhope v. Firmin*, 3 Bing. N. C. 301, are authorities in support of this position.

Wilde, C. J. These cases in effect only show, that where no injustice is done, the court will leave the party to proceed against the attorney. Here, however, the plaintiff's attorney takes De La Cruet to the other attorney, a perfect stranger to the latter, who is thereupon instructed to enter an appearance, and consent to the judge's order on behalf of Francois. This is enough to render the plaintiff liable in respect of the proceedings against Francois, and as there was clearly no authority given by the latter, the rule must be discharged with costs.

The rest of the court concurred.

Rule discharged with costs.

Nye v. Roche. Hilary Term, 1847.

FRIVOLOUS PLEA, DEMURRER TO, EARLY HEARING OF.

The court upon motion will direct, that the demurrer, to a plea which appears to be frivolous and put in for delay, be placed at the top of the special paper, so as to secure its being heard as soon as possible.

In this case a summons had been taken out before *Pollock, C. B.*, to set aside a plea, which alleged that the defendant did not promise *modo et forma*, but was refused, the plaintiff being left to demur, which he subsequently did. The declaration was on a promissory note by the payee against the maker.

Bramwell now applied to have an early day fixed for the hearing of the demurrer. The plea here was clearly in contravention of the new rules, and being evidently put in for the purposes of delay, the court, it was submitted, would, on the authority of *Wilson v. Tucker*, 2 Dowl. P. C. 83, grant the present application.

By the Court. Let the cause be put at the head of the special paper, so as to be taken first on the next special paper day.

Application granted.

Court of Exchequer.

Talbot v. Bulkeley. Graham v. Sandrinelli.
Sittings after Michaelmas Term, Dec. 12, 1846.

AFFIDAVIT TO HOLD TO BAIL.—JUDGE'S ORDER FOR ARREST.

The court has power to discharge out of custody a defendant arrested by order of a judge under the 1 & 2 Vict. c. 110, and the defendant may use affidavits to contradict or explain those on which the order was granted, and such affidavits may be answered by the plaintiff in showing cause.

A party arrested under the 1 & 2 Vict. c. 110, may appeal to another judge, subject to his opinion being reviewed by the court.

Where an order is improperly made under the 1 & 2 Vict. c. 110. the defendant is not entitled to set aside the capias, but only to be discharged out of custody.

An affidavit that deponent has been informed that defendant had said that he was about to go abroad is not sufficient to obtain an order for arrest under the 1 & 2 Vict. c. 110.

An affidavit for arrest under the 1 & 2 Vict. c. 110, stated an edict of a foreign consul requiring the defendant to return to the foreign country within a certain time, which time had then elapsed: Held, insufficient to found the order.

Talbot v. Bulkeley.—The defendant having been arrested under a judge's order, deposited money in lieu of bail. The affidavits in support of the order stated, that the deponent was informed that the defendant had said that he was about to go abroad. A rule was obtained calling on the plaintiff to show cause why the deposit should not be returned.

Humfrey showed cause upon additional affidavits stating that the defendant had since gone to reside abroad. He also argued that the 1 & 2 Vict. c. 110, vested the judge with the discretion of making an order for the arrest of a defendant about to quit the country, and that the court had no jurisdiction to rescind the order.

Martin contra contended that the court had jurisdiction under the 6th section of the 1 & 2 Vict. c. 110. He cited *Finlay v. Ellefsen*, 2 East, 453.

Cur. adv. vult.

Graham v. Sandrinelli.—In this case the defendant was arrested for 1,900*l.*, by order of *Erle, J.*, founded on an affidavit made on the 20th October, which stated that an advertisement appeared in the *Times* newspaper of the 15th September, of an edict of the Austrian consul at Smyrna, on the 1st August, stating that the defendant had absconded from Smyrna, and that he was accused of fraudulent bankruptcy, and requiring him to appear at Smyrna in seventy days, and offering a safe conduct. The affidavit concluded by stating that the deponent believed that the defendant would quit England unless apprehended.

The defendant having been arrested, applied to *Platt, B.*, to set aside the order of *Erle, J.*, and all subsequent proceedings, upon affidavits that defendant intended to remain in England. An application was then made to the court, and the points raised being similar to the last case, with the additional question as to whether the defendant could appeal to another judge to rescind the order, the court took time to consider its powers and duties under the 1 & 2 Vict. c. 110.

Cur. adv. vult.

Parke, B. Before the late statute any judge of the superior courts might have ordered an arrest, subject to review by the court, and if the court thought the order improper, either from a defect in the affidavit to hold to bail, or because an improper discretion was exercised by the judge, they would have set the order aside. It is clear that from the terms of the 6th section of the 1 & 2 Vict. c. 110, the court has power to set aside the order, and there is nothing in that statute to take away the general control previously possessed by the court over a single judge acting in matters pending in court. The party arrested may use affidavits to contradict or explain those on which the order was granted, and those affidavits may be answered by the plaintiff in showing cause. In addition a right is given to the person arrested to take the opinion of another judge as to the propriety of his discharge, this opinion being again subjected to be reviewed by the court above. With respect to *Graham v. Sandrinelli*, we think that my brother *Platt* was right in not granting an order to the extent asked, as the capias certainly ought not to be set aside; but whether he was right in refusing to discharge the defendant is not material now, because we think that my brother *Erle* was wrong in making an order to arrest on such an affidavit. It is probable he did not advert to the circumstance that the Austrian edict called on the defendant to appear at Smyrna in seventy days, and that the seventy days had expired before the application was made. Whilst they were running he might have thought that the defendant would have obeyed the order and gone abroad. The defendant must therefore be discharged out of custody. In *Talbot v. Bulkeley*, we think, that if it were not for the matters disclosed on the affidavits used on showing cause, the defendant would be entitled to have the deposit returned. But these affidavits raise a question upon which the defendant has not, had an opportunity of being heard, viz. whether he has not since the arrest broken up his establishment and gone to reside abroad. That question must therefore be referred to the Master.

Hotham v. Johnson, P. O. Hilary Term, 3rd January, 1846.

SEVERAL PLEAS.—PUBLIC OFFICER.

In an action against the public officer of a joint-stock bank, the court will allow the defendant to plead that he is not a

public officer, together with non assumpsit, unless the plaintiff gives an undertaking not to sue out execution against the defendant personally.

In an action against a public officer of a joint-stock bank,

Unthank had obtained a rule nisi to plead—1st, *Non assumpsit*; 2nd, That defendant was not the public officer.

Manisty showed cause, and took a preliminary objection, that the declaration was not brought before the court by affidavit. He then argued that both pleas were not allowable.

Per curiam. The court will take judicial notice of what the declaration is. With respect to the pleas, the latter may be struck out upon your giving an undertaking not to sue out execution against the defendant personally, otherwise he ought to be allowed to plead it.

Rule accordingly.

Walton v. The Universal Salvage Company.
Hilary Term, 23rd, January, 1846.

SERVICE OF WRIT.—PUBLIC COMPANY.—
APPEARANCE.

The word "clerk" in the 8th section of the Uniformity of Process Act means clerk to the corporation; therefore, the court will not allow an appearance to be entered for a public company upon affidavit that the writ has been served on a clerk at the office of the company, and that it had come to the knowledge of the secretary.

The court will not in any case dispense with personal service of a writ of summons.

G. Pollock moved to enter an appearance in an action against a public company, upon affidavit that the writ of summons was served on a clerk at the office of the company, and that it had come to the knowledge of the secretary. He referred to the 8th section of the Uniformity of Process Act, (2 Will. 4, c. 39,) which enacts, "that every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation."

Per curiam. The service is not sufficient. The word "clerk" in the section referred to

means clerk to the corporation, not clerk to the secretary. You could not enter an appearance upon affidavit that you had served the writ on A., and it had come to the knowledge of B. We some time ago determined that we would not in future dispense with personal service.* If a writ is left at a man's house, and he afterwards admits that he received it, we should not allow an appearance to be entered on such service. You should try to serve the secretary, and if you cannot, then apply for a distringas.

Rule refused.

COMMON LAW SITTINGS.

Exchequer of Pleas.

After Hilary Term, 1847.

IN MIDDLESEX.

Tuesday	Feb. 2	Common Juries.
Wednesday	3	Customs & Com. Juries.
Thursday	4	} Excise & Com. Juries.
Friday	5	
Saturday	6	} Common Juries.
Monday	8	
Tuesday	9	
Wednesday	10	
Thursday	11	} Special and Com. Juries.
Friday	12	
Saturday	13	
Monday	15	

IN LONDON.

Wednesday	Feb. 3	To Adjourn only.
Tuesday	16	} Adj. Day, Com. Juries.
Wednesday	17	
Thursday	18	} Common Juries.
Friday	19	
Saturday	20	
Monday	22	
Tuesday	23	} Special and Com. Juries.
Wednesday	24	
Thursday	25	
Friday	26	
Saturday	27	
Monday	March 1	

The Court will sit at 10 o'clock.

* See *Goggs v. Lord Huntingtower*, 1 D. & L. 599, 12 M. & W. 503.

NISI PRIUS CAUSE LIST.

London.*

Queen's Bench.

REMANETS TO HILARY TERM, 1847.

D. Richardson Capes and S.	Mackay (Inj.) Blackmore (Inj.)	Brooke Burton and others, execu- tors, &c.	Tres, Baxendale and Co.
Keene Vincent and S.	Dean (stayed) S. J. Franklin & another (stay- ed) S. J.	Grace Davis and others	Dt. Alban and B. Dt. Smith
Lewis and S. W. H. Green	Brand (stayed) Bond (Inj.)	Harper S. J. Stanley	Covt. Wm. Bevan Dt. Wilde and Co. Prom. Few and Co.

* The Lists given in our last number were of *Middlesex* Causes.

Phillips	Hartley & another (stayed)	Manton	Prom. Van Sandau & Co.
Pearce and Co.	Robertson (stayed)	S. J. Dargan	Covt. Norris and Son
C. B. Wilson	Gibbs (stayed)	Aberdeen	Covt. Gilbert, Hook, & Co.
Leigh	Edwards and another, assignees	S. J. The East India Company	Dt. Lawfords
Charles Pearson	The Queen	S. J. Bateman and another	Indt. Ashley
Oliverson Lavie and Co.	Soares	S. J. Glyn, Bart., and others	Pro. E. and J. Lawford
Lawrance & P.	Graham and others, assignees, &c.	Corney and another (stayed)	Issue Simpson & Co.
Wright	The Queen	S. J. Clarkson	Indt. Savage
Tyas	Ord	Watson	Ca. Wm. Moss
Lucy and B.	Bailey and another	S. J. Curling	Pro. Same.
Birch and B.	Gregory	S. J. Slark, jun.	Pro. Bird
E. F. Phillips	Spicer	S. J. The General Steam Navigation Company	Ca. Pearce and Co.
Hughes K. and M.	Fisher (stayed)	The Corporation of the Royal Exchange Assurance Company	Covt. J. C. & H. Freshfield
Amory and Co.	Travers and another	Straker and others	Pro. Dean and Co.
Tilson and Co.	Green and others, assignees, &c.	S. J. The St. Katherine Dock Company	Covt. Tooke, Son, and H.
Bartrum	Bordier	S. J. Barnett and others	Prom. Dawes and Sons
Willoughby and J.	Christian and another	S. J. Flavill	Ca. Helme
Soles and T.	Belcher and others, assignees	S. J. Green	Ca. Innes
C. Young	Newton & another	S. J. Belcher	Pro. Abbott
Shaw	Read, admix., &c.	S. J. Morrison	Dt. Bevan
Burrell and Son	Hooper	S. J. Smith	Pro. Swan
Stoddart	Mullineux	S. J. Blann and others, executrix and executors	Pro. Birch and B.
Dickson and O.	Barker	S. J. Bishop	Dt. Amory and Co.
H. E. Campbell	Ingram	Gandell and another	Proms. Westmacott
W. C. Humphreys	The Queen	S. J. Rd. Dunn	Indt. Person
W. H. Green	Bond	Barron Suffield	Prom. E. White
W. Ruck	Ruck and others	S. J. Field	Ca. Marten, Thomas & Co.
Maples and Co.	Fletcher	S. J. Zohrab	Pro. James
Same	Harrison	Gales	Pro. Bell and Co.
G. R. Innes	Green	S. J. Gillett and Wife	Ca. King and A.
Lydo	Dearman	S. J. Ker	Ca. Hume
Jordeson	Cundell (stayed)	Harrison and others	Pro. Chester and Co.
Humphreys	Taylor	Parrott	Dt. Kirk
Parnell and T.	Richardson	Chasen	Pro. Lyle
I. Curling	Curling	S. J. Young and others	Pro. Drew & S. and Gray
Tucker and S.	Lyon	Key and another	Dt. Murray
Burrell and Son	Hooper	Knowles, jun.	Pro. Johnson and Co.
Dolman and S.	Hoare	Meacock	Proms. Thomas Pocock
George Clark	Chalmers and another	Knowles	Dt. Keddell and Co.
G. Brace	Follett and others, assignees	S. J. Thompson	Trov. Allen and N.
Wright and H.	Nightingale	Nightingale	Pro. H. Sturmeys
Hughes K. and M.	Berkley	De Vear, sued, &c.	Pro. Condell
Lacy and B.	Bailey and another	Oliveira	Pro. Fry, L. and F.
G. F. Hudson	Deneulain	Marchss. of Conyngham	Dt. R. Swan [Co.
Cox and S.	Alcock	Castelli	Proms. Oliverson, Lavie &
Same	Tebbutt and another	S. J. Straker	Proms. Dean and Co.
Gatty and G.	Stein and others	Soton	Proms. Neate,
F. W. Dolman	Wilkinson	Hemsworth	Ca. Milburn
I. T. Pullen	Smith	Shuttleworth	Proms. Bell and Co.
Freeman and C.	Whittaker and another	Galloway	Proms. Hicks and M.
O. Richards	Moore	Angell	Dt. In person
Yallop	Swann and another	Varney	Dt. Wright
Jutsum and G.	Jutsum	Hesselwood	Dt. Robinson
Watson and B.	Kidston	Wragg	Ca. S. Smith
Same	Hebblethwaite	Sherwin and others	Proms. Tilson and Co.
Dawe	Lenoir	Soquet	W. F. Walker
I. H. and R. Tyas	Jackson, administrator, &c.	Bevan	Proms. Kearns
Chandler	Allen and another	Collier	Pro. In person
George Bower	Archibald and others	S. J. Tatham	Proms. Litchfield
Same	Same	S. J. Boddington	Proms. Tatham and Son.
Same	Same	S. J. Tatham	Prom. Same
C. Young	Newton and another	S. J. Hyde, jun.	Proms. Same
Same	Same	Liddiard	Proms. Soles and T.
Same	Same	S. J. Ash	Proms. L. Abbott
Tucker and S.	Freeman	Campbell	Proms. Kirk
			Dt. Lucena

Common Pleas.

Baxendale and Co.	Carne	S. J. Bryant	Ca. Ensor
H. Ashley	Hopwood	S. J. Thorn	Ca. Thompson
C. Pearson	The May. of London	S. J. Parkinson and others	Dt. Lawrence and P.
Norris and Sons	Barnewall	S. J. Gillispie	Prom. A. Gordon
Dean and Co.	Carey	S. J. Smallwood	Ca. Dampier
B. Field	Griffin	S. J. Black	Ca. Oldershaw
Lofty, Potter, and S.	Coxhead	S. J. Cass	Ca. Ellis
J. Patterson	Brink and another	S. J. Wingaard	Prom. Bell and Co.
Oliverson Lavie and Co.	Staunton and another	S. J. Batson	Prom. Smith and Co.
Parnter and F.	King and another	S. J. Jenkyns	Prom. Bartholomew
Lowless and Son	Thornthwaite	S. J. Pickering	Prom. Wright and Co.
Marten	Knill	S. J. Evans	Prom. Crowder and M.
Trehern and W.	Hine and another	S. J. Lart and another	Ca. Gregory
Atkinson and P.	Budd	S. J. Bayley	Cov. Newbon and E.
Leigh	Belcher and another	S. J. Brake	Prom. Skinner
C. Pearson	The May. of London	S. J. Kinchin	Tres. Newbon and E.
Ashurst	Nickels	S. J. Ross, jun.	Ca. Holme and Co.
Marten	Johnson and another	S. J. Merian and another	Iss. Leigh
C. Pearson	The May. of London	S. J. Gr. Western Railway Co.	Dt. Maples and Co.
Catlin	Green	S. J. Morson and another	Dt. Stevens—Crowder & M.
Wright	Taylor and another	S. J. Hav and others	Prom. Lane and Co.
Hornby and T.	Levason	S. J. Cooper	Ca. raxon
Vandercom and Co.	Barry	S. J. Wild	Prom. Austen and H.
Finch and S.	Clarke	S. J. Eyre, Knt.	Prom. Coverdale and Lee
Wire and Child	Croll	S. J. Barker and others	Prom. Stevens and Co.
Wilde, Reece, and Co.	Bell, P. O.	S. J. Edge	Ca. C. H. Steadman
Same	Same	S. J. R. Calthrop	Prom. Bouner
Same	Melville and another	S. J. T. Calthrop	Prom. Same
C. Fiddoy	Beard	S. J. Smith	Prom. Dove
Catlin	Barker	S. J. Egerton and others	Ca. Smith and T.
Same	Colyer	S. J. Beauclerk	Prom. Smith, Witham & Co.
T. M. Wilkin	Seppings	S. J. Same	Prom. Same
Marten and Co.	Hyde and others	J. W. Nokes	Dt. Wood and B.
J. H. Linklater	Walter and others, ex- cutors, &c.	S. J. Williams and others	Ca. Young, V. and Y.
Surr and Gibble	Lockyer	S. J. Muntz	Prom. Gregory and Co.
W. Bevan	Harris	Morrison	Prom. Hindman
Ashurst	Westropp and others	S. J. Collet	Ca. Amory and Co.
Finney	Brettell	S. J. Solomon	Prom. Gregory and Co.
M. Lewis	J. W. Cole	Wynne	Prom. Gough
Vincent	Ward and another, assignees, &c.	S. J. Weiss	Prom. Elmslie and P.
T. Tyrrell	Young	S. J. Dalton	Prom. Pontifex and M.
Martin and Co.	Lomer	Gouge	Ca. Hindman and H.
Minet and Smith	Mauger and another	Kingsford, sen., and others	Trov. Wright and Co.
Bailey, S. and S.	Prestage	S. J. Brightman and others	Prom. Lane and P.
Pontifex and M.	Gaskill	Johnson	Prom. Nicholson
Same	Same	S. J. Vowe	Dt. Austin and H.
Same	Same	S. J. Chadwick	Prom. H. Sturmy
Oliverson, Lavie & Co.	Bayley	S. J. Gambier	Dt. Oliverson, Lavie & Co.
Freeman and Co.	Ingram	S. J. Hill	Prom. R. Ellis
Jenkinson and Co.	Bird	Symons	Prom. Letts
Amory and Co.	Bone	Morris	Prom. Raven and B.
Same	Young	Morrison	Poom. Bevan
Marten and Co.	Boonen and another	Same	Prom. Same
J. Barber	Riddell	S. J. Lankenau	Prom. Holmes
Same	Same	Soulby and another, ex- cutors, &c.	Prom. J. Kirkman
Reed and L.	Block and another	Same	Ca. Same
E. E. Pownall	Goodlake	Robertson	Prom. Venning and Co.
Hill and Heald	Madden	King	Prom. Valance and Co.
H. Empson	Cuff	Major and another	Dt. Hutchinson
Stroughill	Humphreys	M'Kinnell	Dt. G. R. Innes
E. Isaacs	Solomons	Shuttleworth	Prom. Bell and Co.
B. Munn	Perry	Lazarus and another	Prom. L. Levy
Notley	Webb	Parr	Prom. H. Philipps
Same	Same	Butterofld	Prom. S. Raven
A. Haynes	Mahony (otherwise Kelly)	Butterfield (widow)	Prom. Same
J. Hodgson	Stocker	Justice	Iss. Justice
C. J. Smith	Shears and another	Gull	Dt. Marten and Co.
		Clarke, Bart.	Prom. Stevens and Co.

Exchequer.

Oliverson, Lavie & Co.	Ralli	S. J. Denistoun	Ca. Gregory F. and Co.
W. Haslam	Dyster and others	S. J. Macnaughton and others	Pro. J. and J. H. Linklater
Barron	Finder and another	S. J. Johnson	Pro. Baylis and D.
Oliverson, Lavie & Co.	Aitcheson	S. J. Pitt	Pro. Williamson and H.
Everest and Co.	Dighton and others	Menser	Pro. Lewis and L.
Baxendale and Co.	Dawson and others	S. J. Troup	Pro. Spyer
Rickards and W.	Elliott	S. J. Moore	Pro. Langley and G.
Baxendale and Co.	Dawson and another	S. J. Ross	Pro. Johnston and Co.
Savage	Hitchins	Wright	Pro. Badham and Co.
Swan	Conway	M'Donough	Pro. Chaplin
W. G. Taylor	Barber	S. J. Grace	Ca. Bower and Son
Roy and Co.	Corlett	S. J. Walbancke	Pro. W. B. James
Dampier	Hughes	S. J. Ward, Esq.	Pro. Elmslie and P.
Desborough and Y.	Cantley	S. J. Cooper	Tres. Bullock and L.
S. Neal	King	Gripper	Tres. Nicholson and P.
Keddell and Co.	Phillips and another, assignees	S. J. Hernaman and others	Pro. Edwards and W.
Mardon and P.	Edwards and another, assignees	S. J. Mathews	Issue, Beevor and B.
T. B. Hudson	Garwood	S. J. Ede	Pro. Harting and Co.
Day and Co.	Simmons	S. J. Edwards, assignees, &c.	Issue, Mardon and P.
Fisher and Co.	Porter and another	Walker	Dt. Patterson and Son
Hawkins and Co.	Bromfield	S. J. Dutton	Pro. Potter and Co.
Same	Jones	S. J. Jerdein	Pro. Same
C. L. Greaves	Greaves	Frost	Pro. J. Taylor
Baxendale and Co.	Dawson and others	S. J. Prichard	Pro. Ashurst
Same	Same	S. J. North	Pro. Taylor.
Same	Entwisle	S. J. Dent and others	Pro. Freshfields
Maples and Co.	Inchbald	Lovell	Pro. Overton and H.
Baxendale and Co.	Clarke	S. J. Chaplin	Pro. Winter and Co.
M'Lood and S.	Alexander and another	Booker	Pro. T. Leigh
Tengue	Green and another, assignees	S. J. Laurie, Knt.	Pro. Webster
Oliverson, Lavie & Co.	Mason	S. J. Owen and others	Pro. Lane and P.
Browne	Pereira	S. Da Camara	Dt. Dawes
Slee and R.	Wainman	Kynman	Dt. Lammin
Hastings	Gains	Huxley	Dt. Townshend
G. and E. Hilleary	Day and another	Reid	Dt. Sadgrove
Ellis	Heseltine	S. J. Siggers	Pro. Robson
Wood	Score	The Tenby, Saundersfoot, and South West. Railway Company	
Steadman	Cowan	Cole	Pro. Stevens and Co.
Baxendale and another	Sadler and another	Johnson	Pro. Howell
W. H. Garry	Allen	Smart	Pro. Elmslie and P.
Rodgers	Bridgeford	Brown and others	Dt. T. J. Jerwood
			Pro. Amory and Co.—Milne and Co.—Megginson and Co.
J. E. Fox	Vivian	Mowatt	Dt. Baxendale and Co.
H. Kensitt, jun.	Kensitt	Ewart and another	Dt. Gray
R. Ford	Phillips and another	Fisher	Pro. Gedye
Jones and B.	Harvey	S. J. Chapman	Pro. Johnson and Co.
Oliverson, Lavie & Co.	Oliverson and another	S. J. Sunly	Pro. Walton
Crowder and M.	Gibb	Lidgett and another	Pro. Cox and S.
Same	Ollive	S. J. Booker	Pro. Leigh.
Desborough and Y.	Foakes	S. J. Pilkington	Pro. H. W. Bull
J. D. Williams	Barker and another	Boyes	Dt. Cox and W.
Gregory and K.	Becker	S. J. Webster	Dt. Wigglesworth and Co.
Hill and H.	Rigge	Burbidge and another	Ca. Whalley
Jones and Co.	Browne	Holmes	Pro. H. R. Hill
Baxendale and Co.	Dawson and others	Hartley	Pro. Manby

BUSINESS OF THE COURTS.

Hilary Term, 1847.

Queen's Bench.

This Court will, on Tuesday the 2nd day of Feb. next, and the two following days, and on Monday the 8th day of February, and the five following days, hold Sittings, and will proceed in disposing of the business in

*The New Trial Paper ;
The Crown Paper ; and
The Special Paper ;*

And in giving judgment in cases then pending.

Exchequer.

This court will hold Sittings, on Saturday the 6th day of February next and the five next following days, and on Monday the 15th day of February

next, and will proceed in disposing of the business then pending in the

New Trial Paper, and in the

Special Paper;

And on Monday the 22nd day of February next, to deliver judgment in all cases then standing for judgment.

LAW PROMOTIONS AND APPOINTMENTS

In pursuance of an Act passed in the 8th and 9th years of the reign of Her present Majesty, intituled "An Act to facilitate the Inclosure and Improvement of Commons and Lands held in Common, the Exchange of Lands, and the Division of Intermixed Lands; to provide Remedies for Defective and Incomplete Executions, and for the Non-execution of the Powers of General and Local Inclosure Acts; and to provide for the Revival of such Powers in certain cases;" Notice is hereby given, that the Inclosure Commissioners for England and Wales have appointed John Johnes, Esq., an Assistant Commissioner under the said act; and that the Lords Commissioners of her Majesty's Treasury have consented to such appointment.

And notice is hereby further given, that the said John Johnes did on the 12th of January inst., at Llandovery, in the city of Carmarthen, make the declaration required by the said act before John Morgan, a Master Extraordinary in Chancery.

H. C. MILES, *Secretary*.

New Street, Spring Gardens, Jan. 14, 1847.

MASTERSEXTRAORDINARY IN CHANCERY.

From Dec. 18th, 1846, to Jan. 22nd, 1847, both inclusive, with dates when gazetted.

Baker, Frederick, Derby. Dec. 18.
Bishop, Charles, Llandovery. Jan. 5.
Homfray, Jeston, Hales Owon. Dec. 22.
Lane, John, jun., Stratford-upon-Avon. Jan. 8.
Lucas, Charles Frederick, Newport Pagnell. Dec. 22.
Musgrave, John, Whitehaven. Jan. 1.
Sanderson, John, Liverpool. Jan. 5.
Sherring, Joseph Brodribb, jun., Bristol. Dec. 18.
Thompson, Thomas, Bishop Wearmouth. Dec. 25.
Viner, Robert, Bath. Jan. 12.
Wiles, George, Horbling. Dec. 25.
Young, Andrew, Falmouth. Jan. 22.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Dec. 18th, 1846, to Jan. 22nd, 1847, both inclusive, with dates when gazetted.

Dearden, Thomas Ferrand, and John Molesworth, Rochdale, Attorneys-at-Law, Solicitors and Conveyancers. Jan. 5.
Foquett, John James, and Leonard Worsley, Newport, Isle of Wight, Attorneys and Solicitors. Jan. 19.

Higgins, Joseph Allen, Francis Higgins, and Charles Morton Ricketts Chamberlain, Ledbury, Solicitors. Jan. 15.

Hepps, Edwin Chorley, and Thomas Cadwallader Brian, Leeds, Solicitors, Jan. 22.

Isaacs, John Frederick, Norfolk Street, Strand, and Joseph Martyr, Greenwich, Attorneys and Solicitors. Jan. 15.

Kinder, Joseph, and John Sorrell, 25, Jewry Street, Aldgate, Attorneys and Solicitors. Jan. 19.

Lyne, Edward, and Simon Peter, Liskeard, Attorneys and Solicitors. Jan. 12.

Millard, James Josiah, and John Francis Adams, Cordwainers' Hall, and 15, Great Distaff Lane, Attorneys and Solicitors. Jan. 5.

Parker, Edward, and Thomas Motley Weddell, Selby, Attorneys-at-Law, Solicitors and Money Scriveners. Dec. 18.

Parker, Edward, Thomas Motley Weddall, and Robert John Parker, Selby, Attorneys-at-Law, Solicitors and Money Scriveners. Dec. 18.

Price, Richard Hope, John Bickerton Deakin, and William Dent, Wolverhampton, Attorneys-at-Law, Solicitors and Conveyancers. Jan. 12.

Ridley, John, and William Laidler Dunn, Newcastle-upon-Tyne and Hexham, Attorneys-at-Law and Solicitors. Dec. 22.

Sellwood, Henry, and James William Conington, Horncastle, Attorneys and Solicitors. Jan. 8.

Sole, Henry William, William Charles Sole, and Frederick Turner, 68, Aldermanbury, Attorneys and Solicitors. Jan. 1.

Upton, John, and John Everard Upton, Leeds, Attorneys and Solicitors. Jan. 15.

Walthew, Frederick James, and Richard Walthew, 5, Furnival's Inn, Solicitors. Jan. 5.

Wilson, Richard, and Edward Turnbull, Hartlepool, Attorneys and Solicitors. Jan. 5.

PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

Royal Assents. Jan. 26, 1847.

Corn Importation.
Navigation.

House of Commons.

NEW BILLS.

Hours of Labour in Factories. For 2nd reading. Mr. Fielden.

Law of Settlement of the Poor. In Select Committee. Lord John Russell.

THE EDITOR'S LETTER BOX.

WE are glad to find, for the honour of our English legal authors, that Mr. Spence's valuable work on Equitable Jurisdiction, has been favourably and eloquently reviewed by Professor Mittermaier in the German Journal of Foreign Jurisprudence.

The case and suggestions sent by a subscriber at Glossop, shall be carefully considered.

Some valuable correspondence has been unavoidably deferred.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 6, 1847.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

CONVEYANCING REFORM.—NEW REAL PROPERTY COMMISSION.

THE profession in all its branches,—judges, counsel, and solicitors,—will equally rejoice in hearing that the Lord Chancellor has appointed, or intends to appoint, commissioners to consider the alleged defects in the Law of Real Property, and the best means of removing those defects. This is the constitutional and legal method of proceeding. No alterations should be allowed in our established laws without the sanction and the responsibility of government, aided by the advice and assistance of persons learned and well-experienced in the several departments to which the proposed alterations relate.

The good old practice used to be, to refer the proposed bills to the Judges who, if such bills passed into law, would be required to execute them. And on the present occasion the Lord Chancellor has adopted a somewhat similar course. We hear that Lord Langdale, a judge peculiarly distinguished for discrimination, cautionness, and impartiality, will be at the head of the commission. Two of the most eminent conveyancing Counsel have also been selected,—namely, Mr. Brodie, the distinguished representative of the old system, (but which he has shown himself not unwilling to alter where it could be really amended,) and Mr. Hayes, an able member of the younger race of conveyancers. To these are added two Solicitors chosen from a class the most extensively engaged in conveyancing practice. The gentlemen nominated from this department

of the profession are,—Mr. Parkinson of the firm of Farrer & Parkinson, and Mr. Broderip of the firm of Powell, Broderip, & Wilde.

The profession will undoubtedly thank the Lord Chancellor for the considerate selection he has been pleased to make—a selection wisely calculated to induce a favourable consideration of whatever measures it may be deemed expedient to recommend. Doubtless, the commissioners will receive, and indeed invite, the suggestions of practical men, and they will exercise their own sound judgments on whatever may come before them.

We hail with much satisfaction the evident design, here indicated, of resorting to better means for considering the subjects of law reform, than have for several years prevailed. The proposed changes will now be weighed and considered by practical men, acting under the serious responsibility of the office to which they have been honourably appointed.

It must be remembered, that when measures are proposed, either by individual statesmen or private societies, (however respectable in their character, or sincere in their views,) there is no official or public responsibility thrown upon them. They make suggestions, often with haste and without adequate opportunities of due investigation, which, if adopted, are made at the peril of those who undertake to bring them forward. The present mode of proceeding seems to be in the right course. Parliament has been urged to simplify, as well the titles to real property, as the forms of conveyance, and to establish an effective system of

registering deeds.* The Lord Chancellor, instead of allowing any further crude and undigested remedies to be applied, has referred the alleged Grievances and the proposed Remedies to be discussed, considered, and reported upon by competent persons, peculiarly well-skilled in all the vast and intricate details of the subject.

We are not aware that a formal commission will be issued under the Great Seal; but, if not, the commissioners will, at all events, act under the immediate authority of the Lord Chancellor, and, as we understand, without any salary or emolument.

This inquiry will, doubtless, extend to all parts of the subject. Neither the Chancellor himself, nor the eminent Commissioners he has chosen, will be satisfied with a partial and imperfect investigation. We doubt not that the materials for forming a sound judgment to be collected under this commission,—whether on those parts of the law of property which are complained of as injurious, or on the practice of conveyancing which is deemed so needlessly expensive,—will be derived from the most experienced and able practitioners in both branches of the profession. Time must be allowed to procure and consider the information and opinions of conveyancers and solicitors; and thus, it may be hoped, a little repose will be allowed to our busy brethren before they are called upon to consider any new bill, either for registering titles, or shortening conveyances.

We shall be glad, as early as possible, to consider the evidence that may be collected, and the report of the learned commissioners, as soon as it may be made.

CONSTRUCTION OF STATUTES.

FORM OF ORDERS OF AFFILIATION UNDER 8TH VICT. c. 10.

As we have had occasion repeatedly to observe, the bungling manner in which modern acts of parliament are for the most part framed, imposes great additional diffi-

The select committee of the House of Lords appointed to inquire into the burdens on real property urged "the necessity of a thorough revision of the whole subject of conveyancing, and the disuse of the present prolix, expensive, and vexatious system." They however expressed their opinion that "a registry of title to all real property was essential to the success of any attempt to simplify the system of conveyancing."

culties on those entrusted with the administration of justice in the superior courts. It is felt and considered to be unseemly to give effect to objections obviously at variance with the spirit and intention of the legislature, but, on the other hand, by refusing to give effect to such objections, the rules of construction are sometimes broken in upon and important legal principles violated or evaded. As a choice of evils, the least assuredly is, to adhere to established rules and principles, and suffer the legislature to correct its own blunders, and remedy the defects created by the imperfect manner in which its intentions are declared.

The law, relating to Orders in Bastardy made by justices, furnishes an illustration of the advantages arising from a strict adherence to what we have ventured to point out as the preferable course.

The act popularly known as the New Poor Law Act, (4 & 5 W. 4, c. 76,) made essential and extensive alterations in the law previously in force with respect to the maintenance and support of illegitimate children. After an experience of ten years, the provisions of the New Poor Law Act were found to operate harshly and injuriously in this respect; and by the act 7 & 8 Vict. c. 101, which passed on the 9th August, 1844, "all powers for obtaining or making an order upon any putative father for the maintenance of a bastard child" ceased and determined, except as thereafter provided. By the provisions of this act the mode of proceeding, in respect of orders in bastardy, was materially changed, and great additional responsibility thrown upon justices in petty session, who were not supplied, either by the act of parliament, or from any official source, with the forms of proceeding necessary for the purpose of carrying the act into operation. As might have been expected under those circumstances, a great number of orders were made by justices in petty session, which, however well founded and just as regarded the merits, were found upon examination to be wholly defective in form. In some cases the orders so made came before the quarter sessions upon appeal; in other instances, (to one of which we are about to refer,) the alleged insufficiency of the order formed the ground of an application to one of the superior courts.

The Queen v. Wroth^a was a rule for a certiorari to remove an order of bastardy

made by two justices of Buckinghamshire, in order that it may be quashed, the ground of objection being, that the order omitted to state that the evidence produced by the mother was given upon oath, or that the corroborative testimony in a material particular was given upon oath. In reply to the objection it was argued, that the act (7 & 8 Vict. c. 101,) in its terms did not require the evidence to be given on oath, the enactment being, that the justices "shall hear the evidence of such woman, and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father; and if the evidence of the mother be corroborated in some material particular by other testimony to the satisfaction of the said justices, they may adjudge," &c.; and that an order made in compliance with the language of the act must be sufficient. On the other hand it was insisted, that the authorities showed, that although an act was silent as to the evidence under it being taken upon oath, proceedings were invalid if it appeared that evidence was not so taken.^b And the learned judge, (*Wightman*), who heard the argument, decided, on the authority of the cases cited, that the order was insufficient, for not stating that the evidence upon which it was made was given upon oath. *Reg. v. Wroth* was determined in Hilary Term, 1845, and it was understood that the objection made and sustained in that case was applicable to a great number of other cases in which orders in bastardy were made by country justices, the defect complained of being found in a printed form which was pretty generally adopted by magistrates throughout the kingdom. The consequences of this decision were without delay represented to the proper authorities, and on the 8th May, 1845, another act (the 3 Vict. c. 10,) obtained the royal assent, the preamble of which states that "divers questions have been raised as to the validity of certain orders in bastardy made by justices under the act of the last session of parliament, intituled, &c., which questions are wholly beside the merits of the cases; and it is desirable to remove such questions, and to prevent the recurrence of the same or similar questions in future." The act then goes on to provide, that proceedings in bankruptcy, according to the forms in the schedule annexed, or to the like tenor and effect, shall be valid

and sufficient in law. All the forms ordinarily used in bastardy proceedings, (16 in number,) are to be found in the schedule referred to by the act, commencing with the application by the woman, and including the warrant of commitment against the putative father in default of distress.

The sufficiency of one of those forms^c was the subject of consideration in a case very recently reported.^d In this case, as in *Reg. v. Wroth*, the application was that the order should be quashed; and the objection was, that although the order stated that the justices heard "the evidence of the mother, and such other evidence as she produced," yet it did not appear that the evidence was taken under the sanction of an oath.

The learned judge, (*Wightman*), who had decided the case of *Reg. v. Wroth*, directed the attention of the counsel in support of the objection to the preamble of the 8 Vict. c. 101, which, after reciting that various questions had been raised as to the validity of orders made under the 7 & 8 Vict. c. 101, which questions were wholly beside the merits of the cases, and that it was desirable to remove such questions, and to prevent the recurrence of the same or similar questions for the future, proceeded to enact, "That where any proceedings have been had or taken before the passing of this act, or shall hereafter be had or taken in matters of bastardy under the recited act, and shall have been set forth according to the forms in the schedule hereunto annexed, the same shall be taken respectively to have been and to be valid and sufficient in law." The question was, whether the order now objected to was not according to the form prescribed by the schedule to the act? In reply, it was suggested, that the stat. 8 Vict. c. 10, was only meant to cure technical defects, and did not meet an objection which went to the legality of the whole proceeding; and moreover, that the form given by the act left a blank, which ought to be filled with the words "on oath," or "on affirmation, as the case may be." The form given by the act ran thus:—"We having heard the evidence of such woman ———, and such other evidence as she hath produced." The blank, it was submitted, must have been intended to be filled up, and the only question was, whether it

^c Form, No. 8, Sch., 8 Vict. c. 10,

^b In *re Gray* and another, 2 D. & L. 539, were expressly relied upon.

^d *The Queen v. The Justices of Cheshire*, 3 D. & L. 337.

should be filled up in the manner already suggested, or with the name of the mother.

Wightman, J., thought the case *Reg. v. Wroth and another* would have been directly in point, had it not been for the passing of the stat. 8 Vict. c. 10, which was intended to cure such defects as that now relied upon. If it were clear that the legislature intended the words "on oath," or "on affirmation," to be inserted as suggested, it would be right to give effect to such intention; but he could not say confidently for what purpose the blank was left, and as the order was to the like tenour and effect as the form given by the schedule, the objection could not prevail. The rule was therefore discharged.

It was, perhaps, to say the least, unfortunate, that a form should be annexed to an act of parliament, containing a blank, the purpose of which a learned judge felt himself unable confidently to state. Happily, this omission has produced no injustice, and so far as its merits have been tested by this case, it must be admitted that the act of 1845 has effectively remedied the technical difficulties arising out of the proceedings of justices in bastardy, created by the act of the preceding session.

LEADING CASES IN COMMON LAW.*

LICKBARROW v. MASON.

Michaelmas Term, 1787.

IN THE QUEEN'S BENCH

2 Term Reports, 63.

THE consignor may stop goods *in transitu* before they get into the hands of the consignee, in case of the insolvency of the consignee; but if the consignee assign the bills of lading to a third person for a valuable consideration, the right of the consignor, as against such assignee, is divested. There is no distinction between a bill of lading indorsed in blank, and an indorsement to a particular person.^b

"Troyer for a cargo of corn. Plea, the general issue. The plaintiffs, at the trial before *Buller, J.*, at the Guildhall sittings after

* In our last volume we submitted to our readers a short series of Leading Cases in the Law of Property and Conveyancing. We now commence a similar selection of Principles of the Common Law.

^b See also *Salomons v. Nissen*, 2 T. R. 674, and *Ellis v. Hunt*, 3 T. R. 464.

last Easter term, gave in evidence that Turing and Son, merchants at Middleburg, in the province of Zealand, on the 22nd of July, 1786, shipped the goods in question on board the *Endeavour* for Liverpool, by the order and directions and on the account of Freeman, of Rotterdam. That Holmes, as master of the ship, signed four several bills of lading for the goods in the usual form *unto order or assigns*: two of which were indorsed by Turing and Son in blank, and sent, on the 22nd July, 1786, by them to Freeman, together with an invoice of the good, who afterwards received them, another of the bills of lading was retained by Turing and Son; and the remaining one was kept by Holmes. On the 25th of July, 1786, Turing and Son drew four several bills of exchange upon Freeman, amounting in the whole to 477*l.*, in respect of the price of the goods, which were afterwards accepted by Freeman. On the 25th of July, 1786, Freeman sent to the plaintiffs the two bills of lading, together with the invoice which he had received from Turing and Son, in the same state in which he received them, in order that the goods might be taken possession of and sold by them on Freeman's account; and on the same day Freeman drew three sets of bills of exchange to the amount of 520*l.* on the plaintiffs, who accepted them, and have since duly paid them. The plaintiffs are creditors of Freeman to the amount of 542*l.* On the 15th of August, 1786, and before the four bills of exchange drawn by Turing and Son on Freeman became due, Freeman became a bankrupt; those bills were regularly protested, and Turing and Son have since been obliged, as drawers, to take them up and pay them. The price of the goods so shipped by Turing and Son is wholly unpaid. Turing and Son, hearing of Freeman's bankruptcy on the 21st of August, 1786, indorsed the bill of lading, so retained by them, to the defendants, and transmitted it to them, with an invoice of the goods, authorizing them to obtain possession of the goods, on account of, and for the use and benefit of, Turing and Son, which the defendants received on the 28th of August, 1786. On the arrival of the vessel with the goods at Liverpool, on the 28th of August, 1786, the defendants applied to Holmes for the goods, producing the bill of lading, who thereupon delivered them, and the defendants took possession of them for and on account of, and to and for the use and benefit of, Turing and Son. The defendants sold the goods on account of Turing and Son, the proceeds whereof amounted to 557*l.* Before the bringing of this action the plaintiffs demanded the goods of the defendants, and tendered to them the freight and charges; but neither the plaintiffs nor Freeman have paid or offered to pay the defendants for the goods. To this evidence the defendants demurred; and the plaintiffs joined in demurrer.

"This was argued in last Trinity Term, by *Erskine* in support of the demurrer, and *Manly* against it; and again, on this day, by *Shepherd* in support of the demurrer, and *Bearcroft* contra."

The case was twice argued, and the following judgment delivered:—

“*Ashhurst, J.* As this was a mercantile question of very great importance to the public, and had never received a solemn decision in a court of law, we were for that reason desirous of having the matter argued a second time, rather than on account of any great doubts which we entertained on the first argument. We may lay it down as a broad general principle, that wherever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it. If that be so, it will be a strong and leading clue to the decision of the present case. It has been argued, that it would be very hard on a consignor, who had received no consideration for his goods, if he should be obliged to deliver them up in case of the insolvency of the consignee, and come in as a creditor under his commission for what he can get. That is certainly true: but it is a hardship which he brings upon himself. When a man sells goods, he sells them on the credit of the buyer: if he deliver the goods, the property is altered, and he cannot recover them back again, though the vendee immediately become a bankrupt. But where the delivery is to be at a distant place, as between the vendor and vendee, the contract is ambulatory till delivery; and therefore, in case of the insolvency of the vendee in the meantime, the vendor may stop the goods *in transitu*. But, as between the vendor and third persons, the delivery of a bill of lading is a delivery of the goods themselves; if not, it would enable the consignee to make the bill of lading an instrument of fraud. The assignee of a bill of lading trusts to the indorsement; the instrument is in its nature transferable; in this respect, therefore, this is similar to the case of a bill of exchange. If the consignor had intended to restrain the negotiability of it, he should have confined the delivery of the goods to the vendee only: but he has made it an indorsable instrument. So it is like a bill of exchange; in which case, as between the drawer and the payee, the consideration may be gone into, yet it cannot between the drawer and an indorsee; and the reason is, because it would be enabling either of the original parties to assist in a fraud. The rule is founded purely on principles of law, and not on the custom of merchants. The custom of merchants only establishes that such an instrument may be indorsed; but the effect of that indorsement is a question of law, which is, that as between the original parties the consideration may be inquired into; though when third persons are concerned, it cannot. This is also the case with respect to a bill of lading. Though the bill of lading in this case was at first indorsed in blank, it is precisely the same as if it had been originally indorsed to this person; for when it was filled up with his name, it was the same as if made to him only. Then what was said by Lord Mansfield in the case of *Wright v. Campbell*,^c goes the full length of

this doctrine: ‘If the goods be *bond fide* sold by the factor at sea, (as they may be where no other delivery can be given,) it will be good notwithstanding the statute 21 Jac. 1, c. 19. The vendee shall hold them by virtue of the bill of sale, though no actual possession is delivered; and the owner can never dispute with the vendee, because the goods were sold *bond fide*, and by the owner’s own authority.’ Now in this case the goods were transferred by the authority of the vendor, because he gave the vendee a power to transfer them; and being sold by his authority, the property is altered. And I am of opinion that this right of the assignee could not be divested by any subsequent circumstances.

“*Buller, J.* This case has been very fully, very elaborately, and very ably argued, both now and in the last term; and though the former arguments on the part of the defendant did not convince my mind, yet they staggered me so much that I wished to hear a second argument. Before I consider the effect of the several authorities which have been cited, I will take notice of one circumstance in this case which is peculiar to it; not for the purpose of founding my judgment upon it, but because I would not have it supposed in any future case that it passed unnoticed, or that it may not hereafter have any effect which it ought to have. In this case it is stated that there were four bills of lading: it appears by the books treating on this subject, that according to the common course of merchants there are only three; one of which is delivered to the captain of the vessel, another is transmitted to the consignee, and the third is retained by the consignor himself, as a testimony against the captain in case of any loose dealing. Now if it be at present the established course among merchants to have only three bills of lading, the circumstance of there being a fourth in this case might, if the case had not been taken out of the hands of the jury by the demurrer, have been proper for their consideration. I am aware that that circumstance appears in the bill, on which is written, ‘in witness the master hath affirmed to four bills of lading, all of this tenour and date.’ But we all know that it is not the practice either of persons in trade or in the profession to examine very minutely the words of an instrument which is partly printed and partly written; and if we only look at the substance of such an instrument, this may be the means of enabling the consignee to commit a fraud on an innocent person. Then how stood the consignee in this case? He had two of the bills of lading, and the captain must have a third; so that the assignee could not imagine that the consignor had it in his power to order a delivery to any other person. But I mean to lay this circumstance entirely out of my consideration in the present case, which I think turns wholly on the general question: and I make the question even more general than was made at the bar, namely, whether a bill of lading is by law a transfer of the property? This question has been argued upon authorities; and before I take notice of any

particular objections which have been made, I will consider those authorities. The principal one relied on by the defendants is that of *Snee v. Prescott*.^d Now, sitting in a court of law, I should think it quite sufficient to say, that that was a determination in a court of equity, and founded on equitable principles. The leading maxim in that court is, that he who seeks equity must first do equity. I am not disposed to find fault with that determination as a case in equity; but it is not sufficient to decide such a question as that now before us. Lord Hardwicke has, with his usual caution, enumerated every circumstance which existed in the case: and indeed he has been so particular, that if the printed note of it be accurate, which I doubt, it is not an authority for any case which is not precisely similar to it. The only point of law in that case is upon the forms of the bills of lading; and Lord Hardwicke thought there was a distinction between bills of lading indorsed in blank, and those indorsed to particular persons: but it was properly admitted at the bar that that distinction cannot now be supported. Thus the matter stood till within these thirty years; since that time the commercial law of this country has taken a very different turn from what it did before. We find in *Snee v. Prescott*,^d that Lord Hardwicke himself was proceeding with great caution, not establishing any general principle, but decreeing on all the circumstances of the case put together. Before that period we find that in courts of law all the evidence in mercantile cases was thrown together; they were left generally to a jury, and they produced no established principle. From that time we all know the great study has been to find some certain general principles, which shall be known to all mankind not only to rule the particular case then under consideration, but to serve as a guide for the future. Most of us have heard these principles stated, reasoned upon, enlarged, and explained, till we have been lost in admiration at the strength and stretch of the human understanding. And I should be very sorry to find myself under a necessity of differing from any case on this subject which has been decided by Lord Mansfield, who may be truly said to be the founder of the commercial law of this country. I hope to show, before I have finished my judgment, that there has been no inconsistency in any of his determinations: but if there had, if I could not reconcile an opinion which he had delivered at *nisi prius* with his judgment in this court, I should not hesitate to adopt the latter in preference to the former: and it is but just to say, that no judge ever sat here more ready than he was to correct an opinion suddenly given at *nisi prius*. First, as to the case of *Wright v. Campbell*, that was a very solemn opinion delivered in this court. In my opinion that is one of the best cases that we have in the law on mercantile subjects. There are four points in that case, which Lord Mansfield has stated so extremely clear that

they cannot be mistaken: The first is, what is the case as between the owner of the goods and the factor; the second, as between the consignor and the assignee of the factor with notice; thirdly, as between the same parties without notice; and fourthly, as to the nature of a bill of sale of goods at sea in general. It is to be recollected that the case of *Wright v. Campbell* was decided by the judge at *nisi prius* upon the ground that the bill of lading transferred the whole property at law; and when it came before this court on a motion for a new trial, Lord Mansfield confirmed that opinion; but a new trial was granted on a suspicion of fraud: therefore it is fair to infer, that if there had been no fraud, the delivery of the bill of lading would have been final. If there be fraud, it is the same as if the question were tried between the consignor and the original consignee. According to a note of *Wright v. Campbell*, which I took in court, Lord Mansfield said, that since the case in Lord Raymond, it had always been held that the delivery of a bill of lading transferred the property at law; if so, every exception to that rule arises from equitable considerations which have been adopted in courts of law. The next case is that of *Savignac v. Cuff*, the note of which is too loose to be depended upon: but there is a circumstance in that case which might afford ample ground for the decision; for I cannot suppose that Lord Mansfield had forgotten the doctrine which he laid down in this court in *Wright v. Campbell*. There he observed very minutely on what did not appear at the trial, that no letters were produced, and that no price was fixed for the goods: but in *Savignac v. Cuff*,^e the plaintiff had not only the bills of lading and the invoice, but he had also the letters of advice, from which the real transaction must have appeared; and if it appeared to him that Selvetti had not been paid for the goods, that might have been a ground for the determination. The case of *Hunter v. Beal*^f does not come up to the point now in dispute; it only determines what is admitted, that, as between the vendor and vendee, the property is not altered till delivery of the goods. With respect to the case of *Stokes v. La Riviere*,^g perhaps there may be some doubt about the facts of it; however, it was determined upon a different ground; for the goods were in the hands of an agent for both parties: that case, therefore, does not impeach the doctrine laid down in *Wright v. Campbell*. It has been argued at the bar, that it is impossible for the holder of a bill of lading to bring an action on it against the consignor: perhaps that argument is well founded: no special action on the bill of lading has ever been brought; for if the bill of lading transfer the property, an action of trover against the captain for non-delivery, or against any other person who seizes the

^e Before Lord Mansfield, 1778.

^f Sittings after Trinity, 1785, at Guildhall, before Lord Mansfield, C. J.

^g Hil. 25 Geo. 3.

goods, is the proper form of action. If an action be brought by a vendor against a vendee, between whom a bill of lading has passed; the proper action is for goods sold and delivered. Then it has been said that no case has yet decided that a bill of lading does transfer the property: but in answer to that it is to be observed, that all the cases upon the subject—*Evans v. Murtlett*,¹ *Wright v. Campbell*, and *Caldwell v. Ball*,² and the universal understanding of mankind—preclude that question. The cases between the consignor and consignee have been founded merely on principles of equity, and have followed up the principle of *Snee v. Prescott*; for if a man has bought goods, and has not paid for them, and cannot pay for them, it is not equitable that he should prevent the consignor from getting his goods back again, if he can do it before they are in fact delivered. There is no weight in the argument of hardship on the vendor: at any rate that is a bad argument in a court of law; but in fact there is no hardship on him, because he has parted with the legal title to the consignee. An argument was used with respect to the difficulty of determining at what time a bill of lading shall be said to transfer the property, especially in a case where the goods were never sent out of the merchant's warehouse at all: the answer is, that under those circumstances a bill of lading could not possibly exist, if the transaction were a fair one; for a bill of lading is an acknowledgment by the captain, of having received the goods on board his ship: therefore it would be a fraud in the captain to sign such a bill of lading, if he had not received goods on board; and the consignee would be entitled to his action against the captain for the fraud. As the plaintiff in this case has paid a valuable consideration for the goods, and there is no colour for imputing fraud or notice to him, I am of opinion that he is entitled to the judgment of the court.

"Grose, J. After this case has been so elaborately spoken to by my brethren, it is not necessary for me to enter fully into the question, as I am of the same opinion with them. But I think that the importance of the subject requires me to state the general grounds of my opinion. I conceive this to be a mere question of law, whether, as between the vendor and the assignee of the vendee, the bill of lading transfers the property. I think that it does. With respect to the question as between the original consignor and consignee, it is now the clear, known, and established law that the consignor may seize the goods *in transitu*, if the consignee become insolvent before the delivery of them. But that was not always the law. The first case of that sort was that of *Wiseman v. Vandepuitt* in Chancery,³ when, on the first hearing, the Chancellor ordered an action of trover to be brought, to try whether the consignment vested the property in the consignees;

and it was then determined in a court of law that it did: but the court of equity thought it right to interpose and give relief; and since that time it has always been considered, as between the original parties, that the consignor may seize the goods before they are actually delivered to the consignee in case of the insolvency of the consignee. But this is a question between the consignor and the assignee of the consignee, who do not stand in the same situation as the original parties. A bill of lading carries credit with it; the consignor by his indorsement gives credit to the bill of lading, and on the faith of that money is advanced. The first case that I find where an attempt was made to introduce the same law between the consignor and the indorsee of the consignee, is that of *Snee v. Prescott*; but as my brother Baller has already made so many observations on that case, it would be but repetition in me to go over them again, as I entirely agree with him in them all, as well as in those which he made on the other cases. Therefore, I am of opinion that there should be judgment for the plaintiff.

"Judgment for the plaintiff."

This judgment was afterwards reversed in the Exchequer Chamber, (see 1 H. Blackstone, 357); but that reversal was overruled in the House of Lords, (5 T. R. 367, and see 6 East, 21); and thus the above decision stands confirmed. This celebrated case, says Mr. J. W. Smith, in his "Notes on Leading Cases," involves two important propositions:—

"The former is, that *the unpaid vendor may, in case of the vendee's insolvency, stop the goods sold, in transitu*. The latter, that *the right to stop in transitu may be defeated by negotiating the bill of lading with a bona fide indorsee*.

"The right of a vendor to stop *in transitu* is bestowed upon him in order to prevent the injustice which would take place, if, in consequence of the vendee's insolvency, while the price of the goods was yet unpaid, they were to be seized upon in satisfaction of his liabilities, and so the property of one man were to be disposed of in payment of the debts of another. The doctrine was first introduced in equity by the cases of *Wiseman v. Vandepuitt*, 2 Vern. 203; *Snee v. Prescott*, 1 Atk. 246, and *D'Aquila v. Lambert*, 2 Eden. 75, Amb. 39. It has since been repeatedly discussed in courts of common law; and it appears strange, that though *stoppage in transitu* has been for many years one of the most practically important branches of commercial law, yet its precise effect upon the contract of sale has never as yet been ascertained.

"The question whether *stoppage in transitu* rescind the contract of sale altogether, or only put the vendor in possession of a lien on the goods defeasible on payment of the price agreed on, has often been matter of controversy, particularly in *Clay v. Harrison*, 10 B. & C. 99.

1 Ld. Raym. 271.

2 1 T. R. 205.

3 2 Vern. 203.

and was said in *Stephens v. Wilkinson*, 3 B. & Ad. 323, to be still undetermined. See also *Wilmhurst v. Bowker*, 5 Bingh. N. C. 547; and *Edwards v. Brewer*, 2 Mee. & W. 375."

NOTICES OF NEW BOOKS.

The New Book of Costs in the Superior Courts of Common Law at Westminster, including the Crown and Queen's Remembrancer's Offices: also, in Bankruptcy, the Court for Relief of Insolvent Debtors, in conveyancing and miscellaneous matters. Containing, also, the Last Directions to the Taxing Officers upon the Lower Scale. By EDWARD THOMAS DAX, of the Exchequer Office, Gentleman. London: Owen Richards. 1847. Pp. xx. 532.

OF all the duties of an attorney, that of making out his bill of costs would appear to be the most agreeable. Here he may describe his various exertions, and set down the accustomed charges, claiming his own rights, and doing justice to his client. This may be so in theory, but in practice it is far otherwise. If, at the end of the year, or at the end of a cause, an attorney could fashion his charges like a medical practitioner—"For medicine and attendance," so many guineas; or like a merchant or trader—"To goods" so much; the duty would be pleasantly and easily discharged. But, according to the long-established practice, it is necessary that the attorney should set forth what advice he gave on each attendance, and state the substance of each letter that he writes. The reason and necessity of every step he takes must be shown; and, no doubt, a well-drawn and accurate bill of costs should contain a complete history of the action or suit or transaction in which he has been engaged.

Now, an attorney in considerable practice can rarely find time to draw out a full statement of all the various matters of business despatched in each day. He is frequently driven to delay the entry of his attendances and correspondence for several days, and then the task becomes oppressive, and he is obliged to curtail and abridge it. When the bill is afterwards prepared for the client, or for taxation between party and party, it is very troublesome and difficult to supply the deficiencies from the letters and papers. Many losses consequently occur, and deductions are made by the taxing officer, which better explanation might have prevented.

We make these remarks on introducing a new bill of costs book which, we think, is calculated to assist the practitioner and his clerks in preparing bills of costs. Such assistance cannot fail to be highly acceptable in every solicitor's office.

There are, indeed, several precedents of bills of costs, either separately or comprised in the books of practice; but, for the most part, they are either out of print, or are become more or less useless by the alterations that have been made by new statutes and rules of court, and new directions to the taxing officers.

Under these circumstances, the author of this work has offered it to the notice of the profession; and he trusts that it will be found as correct as it is possible to make it, having been revised by the most competent persons in authority.

In the arrangement of the work the compiler states that,

"Instead of following the usual course of collecting, under one head, all costs appertaining to proceedings by plaintiffs, and under another head all costs incurred by defendants, the defendant's costs, in each particular case, immediately follow those of the plaintiff; whereby an attorney, whilst settling the costs of the opposite party, will at once see what costs he may charge against his own client. *Ex. gr.*, on reference to the bill, No. 14, p. 149, (on the higher scale,) will be found the plaintiff's costs 'in an action on a bail bond,' and immediately following will also be found such costs as the defendant's attorney is entitled to charge against his own client. This order will prevent the trouble of referring to different parts of the book.

"The correctness of the precedents of bills may be the more relied upon, as almost the whole of them have been copied from bills that have actually gone through the ordeal of taxation; but as it would be difficult to collect bills that have been already taxed, suitable to all occasions, other precedents have been framed to meet any deficiency. It would be impossible to collect or frame precedents to meet every emergency, but sufficient will be found for most cases that are ever likely to occur.

"As far as it was practicable, without needless repetition, complete precedents for bills have been given; so that it will seldom be necessary to refer to one part of the book for some items, and to other parts for the remainder; by this much trouble and inconvenience is avoided."

The greatest difficulty in the taxation of costs arises under the R. G. H. T. 2 W. 4, r. 74, in reference to cross issues; namely, where, upon the same record, some issues, or parts of issues, are found for the plaintiff, and others for the defendant. To ob-

viate this difficulty, as far as it is practicable Mr. Dax has prepared several precedents for bills to meet such cases.

"See Nos. 47, 48, and 49, under the higher scale of costs. No. 47 will show the costs to which the plaintiff is entitled upon certain pleadings where the verdict is for the plaintiff upon the whole record. No. 48 will show to what costs the plaintiff is restricted when one or more issues are found for the defendant; and the next bill, for the defendant, will give the costs to which, under such circumstances, the defendant is entitled, and which are to be deducted from the plaintiff's costs. And again, No. 49, and the following bill for the defendant, will show the costs to which each party is respectively entitled where the material verdict is for the defendant, and some immaterial issue is found for the plaintiff. Although the R. G. appears, in terms, to direct a deduction of the defendant's from a plaintiff's costs, yet it has been held in the case of *Milner v. Graham*, 2 Dowl. 422, that where the defendant's costs amount to a larger sum than the plaintiff's costs, the plaintiff's costs may be deducted from the defendant's. Although these precedents are not suitable for all occasions, inasmuch as the pleadings and results cannot be always alike, yet it is presumed the principle has been sufficiently illustrated to enable attorneys to frame their bills according to the exigencies of each particular case.

"Forms of affidavits of increase, suitable to such matters, as also for general occasions, will be found in the appendix.

"The general fees and allowances applicable to cases in the Crown Office are added; but to have given precedents for bills might have interfered with Mr. Corner's publication, and would have been unjust towards that gentleman.

"The general fees and allowances in the Queen's Remembrancer's office are also added. It has not been thought necessary to increase the bulk and consequent expense of this work by framing precedents of bills therein, as there are no plaintiff's costs for private individuals; and the attorneys' costs on defending their clients may be easily framed from the general charges.

"The costs relating to proceedings in bankruptcy are given so far as they can well be. And the precedents of bills in the Court for Relief of Insolvent Debtors, as framed by Messrs. Lewis, of Ely Place, having been found correct, have been transferred to this work."

It would, perhaps, have been desirable to state the principles observed on the taxation of costs in the Masters' offices, but to supply that defect, the author refers to Master Dax's work on "The Practice in the Offices of the Masters." For anything relating to that part of the subject, reference may be had to that work.

In conveyancing, the usual charges and some precedents have been added for the use of young practitioners. The only fixed allowances are those given under the head of "general charges." Every bill must be made out conformable to the "general charges," adding such items for journeys, attendances, &c., as may be absolutely necessary to be taken. On conveyancing matters Mr. Dax's practical knowledge is, of course, very limited. Such costs rarely come under the notice of the common law taxing officers.

BRIEF NOTES OF DECISIONS IN HILARY TERM.

THE term has concluded. The activity observable at the commencement was not sustained during its progress. The amount of new business fell short of the usual average, and no case of very striking importance can be said to have been discussed either in the equity or common law courts.

Several points, however, of professional interest, in addition to those noticed in a former number,* have been mooted or decided during the term, which it is now proposed concisely to enumerate, in anticipation of the regular reports, without desiring it to be understood that our synopsis is complete, or affords a sufficient substitute for the more extensive and accurate information furnished by the reports.

PRACTICE AT NISI PRIUS.

In an action on the case for negligent driving, the defendant's counsel, at the close of the plaintiff's case, submitted that the evidence was insufficient. The judge who presided decided that there was evidence to go to the jury, but reserved leave to enter a nonsuit if the court should be of a different opinion. The defendant's counsel then addressed the jury and called witnesses, and the jury found for the plaintiff. Upon a motion in the Court of Queen's Bench to enter a nonsuit pursuant to leave, Lord Denman, C. J., intimated an opinion, that the motion ought not to be entertained under the circumstances. Leave to enter a nonsuit was in effect an agreement between plaintiff and defendant with the assent of the judge, founded upon a particular state of facts then known to all the parties. If a new state of facts were substituted and presented to the jury, the consent of the judge must be supposed to be withdrawn. Rule refused. *Hall v. Darell*, 13 Jan., Q. B.

PUBLICATION OF POOR-RATE. — DISTRESS WARRANT, FORM OF. — CONSTRUCTION OF 1ST VICT. c. 45.

In an action of trespass against magistrates, who had issued a distress warrant for poor-rates, it was objected, 1st, That the publica-

tion of the rate was insufficient, as notice had been put up only at one door of a new church, whilst there was an old church in the parish, and also a school-house in which divine service was celebrated every Sunday. 2ndly, That the form of warrant was insufficient, as the warrant only alleged that it had been "duly proved" that the plaintiffs refused to pay the rate, without adding that the proof was on oath. 3rdly, It was objected, that the warrant misdescribed the rate, by stating it to have been made not on the day it was actually made, but on the day it was allowed by the magistrates. The decision of the court on the first point turned on the construction to be put on the stat. 1 Vict., c. 45, s. 2, which enacted, that all proclamations or notices theretofore given or made in churches or chapels, during or after divine service, should in future be written or printed, and "affixed on or near to the doors of all the churches and chapels within such parish or place." The court thought this meant the most usual door of each church or chapel *reddendo singula singulis*. As the old church was not used for the celebration of divine service for twelve years, it was no longer a church within the meaning of the act, and the school-house was not a church or chapel any more than the dissenting places of worship within the parish. The first objection, therefore, could not prevail. As to the second objection, it was enough to say that there was no case which went to show that a warrant of distress for poor-rate was held to be bad, for not stating that the refusal to pay the rate was not proved upon oath. As to the alleged mistake, in inserting the date when the rate was made in the warrant, it could have misled no person, and the rule *falso demonstratio non nocet* applied. Upon these several grounds the rule was made absolute to enter a nonsuit. *Ormerod and others v. Chadwick, Esq., and another*. 12 Jan., Exch.

SUFFICIENCY OF AFFIDAVIT FOR DISTINGINGAS.

The judges of the Court of Common Pleas have lately inquired, with great particularity, into the contents of the affidavits upon which applications have been made in that court for leave to issue writs of *distringas*; and such applications have been refused in many cases in consequence of the insufficiency of the affidavit. In *M'Alpin v. Gregory*, 1 Com. B. 299, it was expressly held that it was not sufficient to state in an affidavit for a *distringas*, that the defendant had not appeared according to the exigency of the writ, as that was not equivalent to stating that he had not appeared "to this action." In a late case, *Maule, J.*, said, "Affidavits for a *distringas* are constantly defective in these particulars." They "do not bring the writ of summons before the court by annexing a copy, they neglect to show that the attempts to serve the defendant were made in the county into which the writ of summons was directed, and they

allege that the defendant had not appeared according to the exigency of the writ, instead of stating that he had not appeared to the action." *Reeve v. Wateryouse*. 14 Jan. C. P.

RAILWAY LAW.

In a case of *Rivett and others v. Wood*, which stood in the new trial paper of the Court of Exchequer, where a verdict had been taken against a provisional committee-man of a railway company, the only evidence against the defendant being that he had assented to become a provisional committee-man, the court, without hearing counsel at either side, stated that the law had been imperfectly understood at the time of the trial, and that there must be a new trial. The plaintiff's counsel intimated that there was understood to be some difference of opinion between the judges on the question of law, which would shortly be brought before the Court of Exchequer Chamber on a bill of exceptions. It was therefore suggested that this case, as well as others similarly circumstanced, should stand over until the opinion of a court of error was obtained. The court, however, was unanimously of opinion that they were bound to act upon their judgment in *Reynell v. Lewis* and *Wyld v. Hopkins* until that judgment was declared to be erroneous. In a case of *Bailey v. Stevenson*, in the same court, which was a similar case against a number of provisional committee-men, where leave had been given to enter a nonsuit, the court again expressed its determination to abide by the judgment already delivered on this question, and ordered a nonsuit to be entered accordingly. In a subsequent case of *Barker v. Stead*, which was an action by an advertising agent against a provisional committee-man for advertisements inserted in newspapers by direction of the secretary, the evidence against the defendant was that he had seen a prospectus containing the name of the secretary, and had assented to his name being published as a provisional committee-man. There was a verdict for the plaintiff with leave to enter a nonsuit, and the Court of Common Pleas declined to hear counsel upon the question, whether the cases of *Reynell v. Lewis* and *Wyld v. Hopkins* were properly decided by the Court of Exchequer, *Wilde, C. J.*, observing, that as there was a deliberate judgment of a court of co-ordinate jurisdiction, he and his learned brothers felt they were bound to consider it as good law until it was reversed by a court of error, otherwise the interests of the public might be placed in jeopardy. Upon the ground of authority therefore, and without expressing any opinion upon the legal question, the court directed a nonsuit to be entered. *Barker v. Stead*. 29 Jan., C. P.

On the other hand, in a case of *Chapman and another v. Lambert*, tried before *Rolfe, B.*, which was also an action against a provisional committee-man for advertisements inserted by

order of the secretary, where the proof was, that the defendant had attended meetings of the committee; the learned Baron left it to the jury to say, if the defendant knew that the advertisements were inserted; and laid it down, that a person attending meetings of a committee, knowing that advertisements had been inserted, and that the insertion was necessary for the purpose of effecting the objects of the company, was personally responsible. *Nisi prius* sittings in Exch. 25 Jan.

**JURISDICTION OF JUDGE AT CHAMBERS:
BANKRUPT'S CERTIFICATE VOID FOR
GAMING.**

By stat. 5 & 6 Vict. c. 122, s. 38, no bankrupt shall be entitled to his certificate, and any such certificate if obtained shall be void, if such bankrupt shall have lost, by any sort of gaming or wagering in one day 20*l*, or within one year next preceding his bankruptcy, 200*l*. A bankrupt having obtained his certificate, was taken in execution by a judgment creditor for a debt due before his bankruptcy, and went before *Erle, J.*, at chambers for his discharge, alleging that he was protected from arrest by his certificate. The learned judge, after hearing the matter on affidavit, being of opinion that the certificate was void for gaming,^c refused to order the defendant's discharge, and dismissed a summons to show why he should not be discharged, with costs. An application was now made to the court by way of appeal from the learned judge's decision, on the ground that the invalidity of the certificate was a fact which ought to be determined by a jury, and not by a judge founding his opinion on affidavits. The court was of opinion, that when application was made to a judge at chambers, he was bound to adjudicate upon this as on other matters of fact brought under his consideration, by affidavit. *Waring v. Smith*, 29 Jan., Q. B.

**ATTORNEY ACTING AS ADVOCATE AND
WITNESS.**

In a case tried before the sheriff of Middlesex, where the plaintiff's attorney addressed the jury as an advocate, and was also sworn and examined as a witness on behalf of his client: *Erle, J.*, (in conformity with the ruling of *Patteson, J.*, in *Stones v. Biron*, ante p. 141) decided, that a rule for a new trial must be made absolute, as it was extremely difficult for a jury, under such circumstances, to distinguish between what was said by the attorney as an advocate, and as a witness. *Dunn v. Packwood*, 28 Jan. Q. B. Prac. Court.

LEGAL EFFECT OF DEPOSIT WITH BANKERS.

In an action by the assignees of a bankrupt banker, against the representatives of a deceased customer, to recover the balance of an overdrawn account, the defendant pleaded a set off for money lent, and the plaintiffs replied, the statute of limitations. At the trial it appeared, that in addition to the current

account on which a balance was due to the bankrupt, the deceased had a distinct account with them of more than six years standing, in respect of which a considerable balance was owing to him. The question was, whether the statute of limitations applied to such an account? On the part of the plaintiffs it was contended, that money deposited with a banker by a customer, was in effect money lent, liable to be repaid whenever the customer's check was presented; whilst it was argued on the other hand, that money so deposited was in its nature trust money, and that the statute of limitations did not apply to such transactions: *Held*, by the Court of Exchequer, *Pollock, C. B., dubitante*, that money deposited with a customer by a banker, was money lent, and that the statute of limitations was applicable to such a deposit as in other cases where money is lent. *Poll and others, assignees, v. Clegg, executor, &c.* 1 Feb. Exch.

PRACTICE ON EXCISE APPEALS.

A party was summarily convicted by a magistrate, upon one out of four counts in an information filed against him by the excise for breaches of the excise laws. He appealed against the conviction to the next quarter sessions for the borough of Leeds, under the stat. 7 & 8 Geo 4 c. 53, and the recorder, who presided, was of opinion, that the evidence was not sufficient to warrant the conviction. The prosecutor then insisted that under the 84th section of the act, the quarter sessions were bound to rehear the whole case, upon appeal, and if the evidence was sufficient, to convict the defendant, upon one or more of the counts on which the magistrate, before whom the case was heard in the first instance, had acquitted him. The Recorder received the evidence so tendered, reserving the point for the opinion and direction of the Court of Exchequer pursuant to the statute. The court unanimously held, that upon the true construction of the act, the quarter sessions could only proceed to examine into those matters, which it was intended to appeal against; and that if it was intended to take the judgment of the quarter sessions, on the evidence applicable to the counts on which the defendant was acquitted by the magistrate, the prosecutor or officer must appeal. Judgment was therefore given against the crown. *The Queen v. Gamble*, 1 Feb. Exch.

[We shall probably continue these brief notices of the result of the decisions of the term.]

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

House of Lords.

APPEALS.

ASSIGNEES OF BANKRUPT.

Trespass.—Pleading.—A declaration in trespass stated a breaking and entering, damaging

* See *Exp. Newman*, 2 Glyn. and J. 329; *Hughes v. Morley* 1 B. & Al. 22.

the doors, hinges, and locks, spoiling the grass and fruit trees; and exposing the plaintiff's goods for sale on his premises; by means of which, &c., the plaintiff was not only disturbed in the possession of his house, but prevented from carrying on his business, and deprived of the enjoyment of his goods. The defendant pleaded, that before the action brought, the plaintiff became a bankrupt: *Held*, on general demurrer, (affirming the judgment of the court below,) that as there were some causes of action included in the declaration which would not pass to the assignees, the plea which embraced the whole, and was not addressed to any particular portion of the declaration, was insufficient, and bad. *Rogers v. Spence*, 12 C. & F. 700.

ASSIGNMENT.

See Judgment.

BANKER.

Exchequer bills.—*Lien*—The general lien of bankers is part of the law merchant, and is to be judicially noticed, like the negotiability of bills of exchange.

A banker's lien does not arise on securities deposited with him for a special purpose, as where exchequer bills are placed in his hands to get interest on them, and to get them exchanged for new bills. Such a special purpose is inconsistent with the existence of a general lien.

Where a person who is in reality the agent of another, deposits exchequer bills with his own bankers, without informing them whose property these bills are, the bankers may be held entitled to consider these bills as the depositor's property, and to hold them as security for any money due to them from him, if the mode of deposit, or the evidences attending it, give them a lien on the bills as against him.

A. was the London agent of *B.*, a Portuguese merchant, and in that character purchased exchequer bills for him, received interest on them, and at proper intervals got them exchanged for others. He acted in the same manner for several other foreign customers. *A.* kept an account with *C.*, as his banker, and at *C.*'s banking-house had several tin-boxes, in which he deposited these exchequer bills, and of which he kept the keys. On the 1st December, 1836, *A.* took out of a tin-box several exchequer bills, which he delivered to *C.*, requesting *C.* to get the interest due on them, and to get the exchequer bills exchanged for others. *C.* did so. Before *A.* came to take back the exchequer bills, acceptances of his beyond the amount of his cash-credit account, were presented at *C.*'s bank, and paid. *A.* afterwards became bankrupt: *Held*, that *C.* had not a lien on the exchequer bills in his hands for the balance due to him on *A.*'s account. *Brandao v. Barnett*, 12 C. & F. 787.

Case cited in the judgment: *Davis v. Bowsher*, 5 Term Rep. 491; 6 M. & G. 670.

REQUEST OF LEASEHOLDS.

Remoteness.—A testator being entitled to leasehold premises for terms of years, bequeathed

them to trustees, on trust to permit his grandson, *B.*, to take the profits thereof during his life, and after his decease to permit such person, who for the time being would take by descent as heir male of the body of the said *B.*, his grandson, to take the profits thereof until some person should attain the age of 21 years, and then to convey the same to such person so attaining that age, his executors, administrators, and assigns; but if no such person should live to attain the age of 21, then in trust to permit such person and persons successively, who for the time being would take by descent as heirs male of the body of the testator's son, (father of *B.*), to take the profits of the same leasehold premises until one of them should attain the age of 21, and then to convey the same to such heir male first attaining that age, his executors, administrators, and assigns.

At the death of *B.*, the grandson, his son and heir, *A.*, had attained the age of 21, and entered into possession of the leasehold premises. Upon a bill filed against him by the next of kin of the testator: *Held*, that *A.* had not a good title to the leaseholds; that the bequest to the heir male of the grandson attaining 21, was void for remoteness, and therefore, that the next of kin of the testator, at his death, became entitled to their distributive shares of the property at the death of the grandson. *Lord Duncannon v. Smith*, 12 C. & F. 546.

Cases cited in the judges' opinions: *Ibbetson v. Ibbetson*, 10 Sim. 495; 5 Myl. & C. 26; *Jee v. Audley*, 1 Cox, 324; *Leake v. Robinson*, 2 Mer. 363; *Lord Southampton v. Marquis of Hertford*, 2 V. & B. 54; *Ware v. Polhill*, 11 Ves. 257; *Trafford v. Trafford*, 3 Atk. 347; *Countess of Lincoln v. Duke of Newcastle*, 12 Ves. 218; *Tollemache v. Lord Coventry*, 2 C. & F. 611; *Cudell v. Palmer*, 1 C. & F. 372; *Ker v. Lord Duncannon*, 1 Dru. & W. 509; *Taylor v. Biddal*, 2 Mod. 289; *Ferrand v. Wilson*, 4 Hare, 377; *Mackworth v. Hinckman*, 1 Keen 638; *Baker v. Proctor, Turn. & R.* 31; *Marshall v. Holloway*, 2 Swanst. 432; *Stephens v. Stephens*, Cas. temp. Talbot, 232; *Proctor v. Bishop of Bath and Wells*, 2 H. Blacks. 358; *Duke of Norfolk's case*, 3 Ch. Cas. 1; 2 Freeman, 72.

CHARITY.

Deed of gift.—**Surplus.**—In searching for the intention of a donor, which is the standard to govern the construction of a deed of gift, the facts—1st, that the gift is subject to the consideration of making certain payments to others; 2ndly, that forfeiture will be incurred by non-performance of that condition; and 3rdly, that the donee may be subjected to loss by the performance of that condition, are sufficient to raise the presumption, that in case of the increase of the fund, the donor intended to give to the donee the benefit of that increase.

A donor granted the principal and professors of a college certain lands "upon the conditions hereinafter specified," to maintain three bursars, "according to the manner, measure, and quality, and as the rest of the bursars" of philosophy, presently in the said college already founded, are educated and entertained, and

imposed as a condition, (the penalty for the breach of which was forfeiture,) that the principal and professors should admit to the bur-sarships the presentees of the donor and his family: *Held*, (reversing the judgment of the court of sessions): that this was a grant upon condition, and not a mere trust, and that the principal and professors were entitled, after satisfying the conditions of the deed of gift, to appropriate to themselves any surplus from the lands thus given. *Jack v. Burnett*, 12 C. & F. 812.

Cases cited in the judgment: *Attorney-General v. Corporation of Bristol*, 2 Jac. & W. 294; *Attorney-General v. Cordwainers' Company*, 3 Myl. & K. 536; *Attorney-General v. Smythies*, 2 Russ. & M. 717; *Attorney-General v. Fish-mongers' Company*, 5 Myl. & Cr. 11.

COSTS.

When a decree is varied by the House only on a point which was not raised in the court below, nor made a ground of appeal, the appellant must pay the costs of the appeal. *Wallace v. Patton*, 12 C. & F. 491.

EVIDENCE.

See *Quare Impedit*.

GIFT.

See *Charity*.

GLEBE.

See *Tithes*.

JUDGMENT.

Assignment. — Notice. — Under the 9 Geo. 2, c. 5, (Irish stat.), payment of the consor of a judgment to the consee, without notice of the assignment of the judgment, is to be deemed payment to the assignee thereof.

The registration of the assignment under that statute does not operate as notice to the con-sor.

The situation of a consor under this statute resembles that of a mortgagor, under the (Eng-lish statute) 32 H. 8, c. 34. *Boyle v. Ferrall*, 12 C. & F. 740.

LEASES.

See *Renewal*.

See *Banker*.

MODUS.

See *Tithes*, 2,

NOTICE.

See *Judgment ; Trust*, 1.

QUARE IMPEDIT.

Evidence. — In a *quare impedit*, where the Bishop of Derry claimed the right of patronage of a living in the county of Londonderry, which was within the diocese of Derry, a surrender made by the former bishop to the crown, of all the livings in that county, was tendered in evidence. This surrender was coupled with a grant by the crown, dated two days afterwards, of the living which had been so surrendered.

Taken together, these documents were held to be admissible in evidence; and as the grant recited, that all the livings in the county had anciently belonged to the see, such evidence was, for the purpose of proving the title of the bishop, received as an admission by the crown of that fact.

The value of such evidence was still open to dispute. Before the date of the grant, the crown had entered into articles of agreement with persons now represented by the governor and assistants of the Irish Society, to grant to them the living in that county of which the living in question was named as one.

Held, that this agreement did not prevent the grant from being receivable in evidence, how-ever its value might be thereby affected.

Two letters from the crown to two successive bishops of Derry, directing them to perform the covenants and directions contained in the grant, were tendered in evidence as recognitions by the crown of its previous grant.

Held, that they were admissible for this pur-pose.

Entries in the books at the First Fruits' Office are admissible to show the fact of a collation to a living made by the bishop at a particular time.

Returns made by the bishop, in obedience to writs from the Exchequer, requiring him to state the vacancies of and presentations and collations to the livings in his diocese, are ad-missible in evidence, as statements made by a public officer in the discharge of a public duty.

Though such returns may contain statements of a kind unusual in such documents, which statements were in favour of the right of the bishop who made them, they are, nevertheless, admissible, provided that the statements are within the scope of the inquiry in the writ.

An original collation from the registry of the writ office, and appearing on the face of it to be *pleno jure*, is admissible to show that the right claimed has in fact been exercised.

An objection was taken, that certain docu-ments tendered in evidence were not admissible for a particular purpose. The court decided that they were admissible. An exception was taken to this decision.

Held, that if the documents were admissible on any ground, the exception could not be sus-tained. In such a case a court of error can only look at the record, and decide upon the propriety of the ruling, as therein stated. *Irish Society v. Bishop of Derry*, 12 C. & F. 641.

QUO WARRANTO.

A proceeding by information in the nature of *quo warranto* will lie for usurping any office, whether created by charter of the crown alone, or by the crown with the consent of parliament, provided the office be of a public nature and a substantive office, and not merely the function or employment of a deputy or a servant held at the will and pleasure of others.

The office of treasurer of the public money of the county of the city of Dublin is an office for which an information in the nature of a *quo*

warranto will lie. *Darley v. The Queen*, 12 C. & F. 520.

Cases cited in the opinions of the judges: *Rex v. Mayor of Hertford*, 1 Lord Rayn. 426; *Rex v. Gregory*, 4 T. R. 240, n.; *Rex v. Williams*, 1 Burr. 402; *Rex v. Stacey*, 3 T. R. 2; *Rex v. Trevenon*, 2 Barn. & Ald. 339, 479; *Anon.* 1 Barnard, K. B. 279; *Rex v. Bingham*, 2 East, 308; *Rex v. Highmore*, 1 Dowl. & R. 438; 5 Barn. & Ald. 771; *Rex v. Goudge*, 2 Stra. 1213; *Rex v. Franchard*, 2 Stra. 1149; *Rex v. Hulston*, 1 Stra. 621; *Rex v. Hall*, 1 Barn. & Cress. 123; *Rex v. Dawbeny*, 2 Stra. 1196; *Rex Shepherd*, 4 T. R. 381; *Rex v. Duke of Bedford*, 1 Barnard K. B. 242; *Rex v. Badcock*, 6 East, 359; *Rex v. Nicholson*, Str. 299; *Rex v. Beedle*, 3 A. & E. 467, n.; *Rex v. Harley*, in *Rex v. Ramsden*, 3 A. & E. 456; *Re the Aston Union*, 6 A. & E. 785; *Rex v. Bedford Level Corporation*, 5 East, 356; *Rex v. Justices of Herefordshire*, 1 Chit. 700.

RAILWAY ACTS.

Construction.—Vertical deviation.—Notices given, and plans and sections of an intended railway deposited, in pursuance of the standing orders of the Houses of Parliament, previous to an application for an act, are not to be regarded in construing that act afterwards, unless they are so referred to as to be incorporated therewith.

A vertical deviation of the level of a railway, not exceeding five feet, calculated with reference to the *datum* line shown on the plans and sections deposited in pursuance of the standing orders of the Houses of Parliament, is within the powers of deviation conferred by the Railway Clauses Consolidation Act for Scotland, (8 & 9 Vict. c. 33, s. 11,) although the deviation may exceed 5 feet, calculated with reference to the *surface* line shown on the said plans and sections. *North British Railway Company v. Tbd*, 12 C. & F. 722.

Cases cited in the judgment: *The Feoffees of Heriot's Hospital v. Gibson*, 2 Dow. 301; *Squire v. Campbell*, 1 Myl. & C. 459

REMOTENESS.

See *Bequest*.

RENEWAL OF LEASES.

K., holding lands under the see of *D.* for a renewable term of years, devised them, in 1787, to two persons for a like term, with a *totius quoties* covenant for renewal. These sold their interest in part of the lands, and divided the rest equally among them. On the death of one, his share passed to his two sons, *A. & A. Lowry*; the share of the other was sold to *P.* The two Lowrys obtained a renewal of the lease of all the lands to themselves, in 1822, without the *P.*'s knowledge, and then mortgaged them to *M.*, and obtained a judgment in ejectment against *P.*, who thereupon filed a bill against them and *M.*, and obtained, in 1826, a decree for an account and re-conveyance of his part, on payment of his proportion of the renewal fines and costs. *W.*, who had been the attorney of the Lowrys in all these matters, obtained an assignment of their interest, in 1829. *P.* did not make up the decree of 1826, but he made

several payments to *W.* in respect of the renewal fines and costs, and urged him to re-convey to him his part of the lands, and grant a renewal; but being in distress, he signed an agreement to surrender his lands to *W.*, and take part of them as his tenant.

Held, upon a bill filed by *P.*, in 1842, that he was entitled to the benefits of the decree of 1826 against *W.*; that the accounts thereby directed ought to be then taken; that the agreement signed by *P.* to surrender was without consideration and void, and that he was entitled to the value of his lands while they were in the possession of *W.*, and to a re-conveyance and renewal, upon payment of the balance found due from him. *Wallace v. Patton*, 12 C. & F. 491.

SOLICITOR.

A defendant, who, by mistake in practice, allows an account to be taken against him without objection, is not entitled, being himself a solicitor, to have the accounts re-opened. *Wallace v. Patton*, 12 C. & F. 491.

TITHES.

1. *Glebe.—Disappropriation.*—The 3 & 4 W. 4, c. 37, s. 124, empowers the Lord Lieutenant and Privy Council in Ireland to "disappropriate, disunite, and divest any rectory, vicarage, tithes, or portions of tithes, and glebes, or part or parts thereof, from and out of any archbishopric, bishopric, deanery, or archdeanery, dignity, prebend, or canonry, and to unite every such rectory, vicarage, tithes, or portions of tithes, to the vicarages and perpetual or other curacies of such parishes respectively, so that each such rectory, vicarage, tithes, or portion of tithes, and glebes, or part or parts thereof, shall, with its respective vicarage, perpetual or other curacy, form a distinct parish or benefice." *Held*, that the Lord Lieutenant and Privy Council have authority to disappropriate any part or portion of the tithes of a rectory: That the word "rectory" in the statute must be applied in its widest legal sense, and therefore includes the glebe; and that an order of disappropriation of "rectory," made by the Lord Lieutenant and Privy Council, cannot be restricted to the tithe rent-charges, unless on the face of the order of disappropriation such restriction is manifested.

In an order of the Lord Lieutenant and Council, made under this act, there was a statement of the revenues of three rectories belonging to a cathedral treasurership. The order then went on to say, "There is a further income belonging to the said treasurership, arising from demised lands, amounting to the yearly sum of 80*l.* 6*s.* 1*d.*" The glebe lands which were not in express terms mentioned in the order, did amount to nearly the sum stated. A small piece of land, called the treasurer's garden, made up the rest. After this statement of the revenues, the order went on to disappropriate "the rectories, together with the rectorial tithes thereto belonging," in pursuance of the power given by the act, but said nothing about the glebe: *Held*, that the glebe lands were, under

this order, disappropriated from the treasure-ship. *Wilson v. Loveland*, 12 C. & F. 677.

2. *Modus*.—*Issue*.—To a bill by the rector for an account of tithes against the owner and occupier of land in the parish, they set up a *modus* of 13l. 6s. 8d., payable half-yearly; and they showed receipts for that payment under various descriptions, as “rent for the rectory,” and “prescribed rent due to the rector,” from the year 1637, with some interruptions; and also receipts for a payment of 8s. 9½d., which was supposed to be a payment in respect of tenths due from the rector to the crown.

Held, by the Lords, affirming a decree for an account, that the case made by the appellants would not warrant the court to direct an issue to try the existence of the alleged *modus*, the evidence against it being free from doubt. A landowner cannot, like a rector, insist on an issue as a right, but in doubtful cases it is granted. *Cairns v. Raine*, 12 C. & F. 833.

1. *Notice*.—*Reference*.—Trust funds were invested in the purchase of transferrable shares in a banking company, in the name of one of the trustees, who was also a holder of shares in his own right in the same company, and afterwards made several sales and purchases of shares therein. There was no distinguishing mark by which the shares could be traced, the same being in the nature of capital, expressed by quantity. The trustee agreed to assign some of the shares standing in his name to the banking company, as security for repayment

of advances which had been made to him, but no transfer was made. He afterwards became bankrupt, without having shares sufficient to satisfy the trusts, and his agreement to assign:—

Held, 1st, That the banking company had no lien on any of the shares which had been held in trust.

2ndly, That although the shares held in trust might have been charged by sale and repurchase, the trustee must still be considered as holding, for the purposes of the trust, the same number of shares out of a larger number that were standing in his name at the time of the bankruptcy.

3rdly, That as no shares were transferred in pursuance of the agreement, no question as to whether the bank directors were purchasers with or without notice could arise; and of the two equities, for the *cestui que trust* and for the bank, the former must be preferred. *Murray v. Pinkett*, 12 C. & F. 764.

2. If charity trustees are guilty of a breach of trust, the person thereby injured has no right to be indemnified by damages out of the trust funds.

The law is the same in this respect both in England and Scotland. *Heriot's Hospital, Feoffees of, v. Ross*, 12 C. & F. 507.

Cases cited in the judgment: *Duncan v. Findlater*, 6 C. & F. 894; *MacL. & Rob. 911*; *Auchterarder case*, *Ferguson v. Kinnoul*, 9 C. & F. 251.

CIRCUITS OF THE JUDGES.

(The Mr. Justice Erle will remain in Town.)

SPRING CIRCUITS. 1847.	HOMR.	NORFOLK.	MIDLAND.	NORTHERN.	NORTH WALES.	SOUTH WALES.	OXFORD.	WESTERN.
Commission Days.	Lord Den- man L. C. J. Wilde.	C. L. B. Pollock. J. Coleridge.	B. Parke J. Patteson	B. Alderson B. Rolfe	J. Coltman	J. Wight- man	J. Maule B. Platt	J. Crosswell J. Williams
Monday . Feb. 15	.....	.....	.....	Lancaster	.....	.....	.....	.....
Thursday . . 18	.....	.....	.....	Appleby	.....	.....	.....	.....
Saturday . . 20	.....	.....	.....	Carlisle	.....	.....	.....	.....
Wednesday . 24	.....	.....	.....	Newcastle &	.....	.....	.....	.....
Saturday . . 27	.....	.....	.....	[Tn.	.....	.....	Reading	Winchester.
Monday . March 1	.....	.....	Northampton	Durham	.....	.....	.....	.....
Tuesday . . 2	Hertford	.....	[ton	.....	.....	.....	.....	.....
Wednesday . 3	.....	.....	.....	.....	.....	Swansea	.....	.....
Friday . . . 5	.....	.....	Oakham	.....	.....	.....	.....	.....
Saturday . . 6	.....	.....	Lincoln &	York & City	.....	.....	Oxford	Salisbury
Monday . . . 8	Chelmsfd.	Aylesbury	[City	.....	.....	.....	Haverford	Dorchester
Thursday . . 11	.....	.....	.....	.....	.....	.....	[west&Tn	.....
Friday . . . 12	.....	.....	Nottingham	.....	.....	.....	Worcester	.....
Saturday . . 13	.....	Bedford	[& Tn.	.....	.....	.....	.....	.....
Monday . . . 15	Malden	.....	.....	.....	Welchpool	.....	.....	.....
Tuesday . . 16	.....	.....	Derby	.....	.....	Cardigan	Stafford	Exeter & Co.
Wednesday . 17	.....	Huntingdon	.....	.....	.....	.....	.....	.....
Thursday . . 18	.....	.....	.....	.....	Bala	.....	.....	.....
Friday . . . 19	.....	Cambridge	.....	.....	.....	.....	.....	.....
Saturday . . 20	.....	.....	Leicester & B.	Liverpool	Carmarvon	Carmar-	.....	.....
Monday . . . 22	Lewes	.....	.....	.....	[then	.....	.....	.....
Tuesday . . 23	.....	.....	Coventry	.....	.....	.....	.....	.....
Wednesday . 24	.....	.....	Warwick	.....	.....	.....	.....	.....
Saturday . . 27	Bury St. Ed.	.....	.....	.....	.....	.....	.....	.....
Monday . . . 29	Kingston	Norwich &	.....	.....	.....	.....	.....	.....
Tuesday . . 30	.....	[City	.....	.....	.....	.....	.....	.....
Wednesday . 31	.....	.....	.....	.....	.....	.....	.....	.....
Thursday . April 1	.....	.....	.....	.....	Mold	.....	.....	.....
Saturday . . 3	.....	.....	.....	.....	.....	.....	.....	.....
Monday . . . 5	.....	.....	.....	.....	Chester	Chester	.....	.....
							Gloster & C.	

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Anderson v. Stalher.

NEW ORDERS.—SERVICE OF COPY OF TRAVERSING NOTE ON DEFENDANTS ABROAD, UNDER THE 56TH GENERAL ORDER OF MAY, 1845.

ON the last day of the sittings after Michaelmas Term, the Lord Chancellor affirmed the decision of Vice-Chancellor Knight Bruce in the above cause, as reported, *ante*, page 211. An appearance had been entered for the defendants under the circumstances stated in 32 L. O. p. 488-9.

Rolls Court.

Tugwell v. Hooper. Jan. 22 & Feb. 1, 1847.

PRODUCTION OF DOCUMENTS.—AFFIDAVITS.

The affidavit of the solicitor of a defendant will not be admitted upon a motion for the production of documents.

Communications passing between a trustee and other parties, relatively to the trust matters, cannot be kept back from any of the cestui que trusts, upon the ground of professional confidence subsisting between the trustee and the parties with whom he communicated.

THIS was a motion for the production of documents under the following circumstances: In July, 1841, a marriage took place between a solicitor of the name of Hooper, and the daughter of another solicitor of the name of Frea. In the negotiations which preceded the marriage, Mr. Hooper was represented by the firm of Tugwell, Salmon, & Meek, afterwards Tugwell & Meek; and Mr. Frea and his daughter by another solicitor of the name of Bolby. Mr. Hooper was much indebted at the time of the marriage, and part of the preceding negotiations related to arrangements for paying off these debts. Ultimately, certain estates were settled upon Mr. Hooper and his intended wife, subject to a charge to Messrs. Tugwell & Co., in part consisting of bills of costs due to them. Mr. Bolby was one of the trustees of the settlement by which this arrangement was made. After the marriage, questions arose between the parties as to the amount of the charge due to Messrs. Tugwell & Co.; and for some time Mr. Bolby acted in these matters as solicitor for Mr. and Mrs. Hooper, and for Mr. Frea. In July, 1842, these questions gave rise to a suit, by which Mr. Hooper sought to reduce the amount of the charge to which the settled estates were subject. Upon this, Mr. Bolby ceased any longer to act as solicitor for Hooper, though he continued to act as solicitor for Mr. Frea. In the month of July, 1844, Messrs. Tugwell & Co. filed a cross suit against Hooper and Bolby, for the purpose of establishing their charge and obtaining a declaration

that Bolby was a trustee for them; Hooper, on the other hand, contending, that they had no equity to enforce this trust, but that it was solely an arrangement for his benefit. Bolby thereupon employed Mr. Frea as his solicitor, thus reversing their original situation. In this suit the motion was made.

The documents asked for were of three classes:—

1st, Communications which had passed between Mr. Bolby and Mr. Frea before the marriage took place.

2ndly, Communications which had passed between Mr. Bolby and Messrs. Hooper & Frea after the marriage, and during the time that Bolby continued to act as solicitor for them, and which he stated to have been in his character of solicitor, and not in that of trustee.

3rdly, Communications which had passed between Mr. Frea and Mr. Bolby after the institution of the cross suit, and at the time when Frea was acting as solicitor for Bolby.

The motion was originally made on the 22nd, when it appeared that the affidavit by which protection was claimed for the documents sought to be protected was made by Mr. Frea as the solicitor, and not by the defendants against whom the motion was made. Both sides were anxious to proceed upon the affidavit; but Lord Langdale refused to receive it, observing that there had been a great extension in the practice as to admitting documents to be protected by affidavit. The affidavit of the defendant had been allowed to become a sort of supplemental answer; but, if one person, not being a defendant, was to be allowed to make an affidavit for such a purpose, how could another be excluded? The motion was subsequently renewed upon affidavits made by Messrs. Hooper & Bolby.

Mr. Kindersley and Mr. Wray for the motion.

Mr. Turner and Mr. Hardy, *contra*, urged, as to the first class of documents, that they could not be required to be produced in a cause to which Mr. Frea was not a party, an objection which applied equally to the second class of documents, so far as Mr. Frea was concerned. With respect to Mr. Hooper, they contended that these documents were protected as having passed between Hooper and his solicitor in reference to a dispute then pending. The third class, they urged, were yet more clearly entitled to protection, because here Bolby had his own interest to consider, as well as that of his *cestui que trusts*.

Lord Langdale said, that Mr. Bolby, though apparently from the best motives, had yet placed himself in a situation of considerable difficulty. There had been some question made as to whether or not the deed of settlement was so framed as to constitute him a trustee for Messrs. Tugwell & Co.; but, considering the admissions made upon the answer and affidavits, he thought that for present purposes he must hold him to be a trustee for them. Then the case stood thus, that when disputes arose between the parties for whom he was trustee he became the solicitor for some of those parties

only. Now, a gentleman who had become trustee for several parties could not, in his opinion, act as solicitor for one of them independently of the other in respect to the matters of the trust. As trustee it was his duty to be impartial, not to act for the advantage of one more than of the other. How then could any communications with one *cestui que trust* be kept secret from another upon the ground of professional confidence? It was his desire to act upon the strict rule of the court, although he might have thought that that rule too much restricted the power of obtaining discovery. But no case like the present one had been cited. A trustee who continued to act as solicitor for some of his *cestui que trusts*, might in that character acquire knowledge most important to the proper carrying on of the trust; but he could not refuse to disclose this to the other *cestui que trusts*. Here it was said, that some of the correspondence was with a person not interested in the trust, and who was not a party to the cause. But the application was only for such papers as related to the trust; any portions of the correspondence relating to other matters might be sealed up; and it was to be observed that Frea had notice of the trust, and was himself a party to the arrangement made. He thought, therefore, that the two first classes of documents must be given up. With regard to the third class, those written after the time when Bolby had to consider the case relatively to himself, the affidavit did not speak as clearly as he could wish: in respect to them, he thought they ought to be protected.

Vice-Chancellor Knight Bruce.
Day v. Beggel. Dec. 1st, 1846.

PRACTICE.—ORDERS OF 1845.

Where a subpoena to rejoin had been served before the orders of 1845 came into operation, and no steps had been since taken by the plaintiffs, on a motion by the defendant, the court ordered that publication should pass on a future day.

THE bill in this case was filed in 1841, the answer and replication in 1842, and the subpoena to rejoin was served in 1843. No further step was taken until notice to dismiss was given by the defendant, but upon the motion the plaintiff did not appear, and no order was made, the course taken by the defendant being considered irregular, but leave was given to amend the notice of motion.

Martindale moved that publication should pass forthwith, and cited *Wheatley v. Wheatley*, 7 Beav. 577; *Prentice v. Phillips*, 9 Jurist, 26.

His Honour directed that publication should pass on the 10th day of the then following Hilary Term.

Vice-Chancellor Wigram.

Morrison v. Morrison. Jan. 22.

GUARDIAN TO AN INFANT RESIDING IN CHINA.

Mr. Egan applied to the court for the ap-

pointment of a guardian for one of the defendants in this cause, an infant now residing in Hong Kong, in China.

This is a suit instituted by the widow of the late Dr. Morrison, the celebrated missionary and Chinese scholar, to ascertain the rights of herself and children, under the will of the late Hon. John Robert Morrison, who died in China. And the application is, that Robert Morrison, Esq., may be appointed guardian to Martin Crofton Morrison, one of the infant defendants in this suit, but now residing at Hong Kong.

Vice-Chancellor. — Is there any evidence to sustain the application?

Mr. Egan said, affidavits had been filed in support of the motion, which stated that the defendant was an infant, and residing at Hong Kong, in the empire of China; that Robert Morrison was also a defendant in the suit, but that his interests were not adverse to those of the other infant defendants, and that he was in every respect a proper person to be a guardian to the infant Martin Crofton Morrison. The learned counsel also stated that Lord Langdale, Master of the Rolls, had been pleased to assign Mr. Robert Morrison guardian to the other infant defendants residing in England; but it was deemed advisable to make this special application to his Honour, relative to this particular infant, in consequence of his residence at Hong Kong, which, by the treaty effected by Sir Henry Pottinger, and by acts of parliament subsequently passed, had been established a British settlement. Under those circumstances, it was prayed that the application would be granted.

His Honour considered the evidence sufficient, and granted the motion.

Queen's Bench.

(Before the Four Judges.)

The Queen v. Check and another. Hilary Term, 1847.

MANDAMUS. — RETURN. — INTERPLEADER ACT.

A poor-rate was made for the parish of B., which was abandoned. A second rate was made, to which several objections were taken by G., a rated inhabitant of the parish, which were not allowed to prevail. A writ of mandamus afterwards issued to the justices to grant a distress warrant against G. for his share of the rate. The court refused an application made on behalf of G., under the statutes 1 W. 4, c. 21, s. 4, and 1 & 2 W. 4, c. 58, s. 8, that he might be permitted to join with the justices in framing a return to the writ of mandamus.

In July last a poor-rate was made for the parish of Broadway, in the county of Worcester, and R. Griffiths, an attorney, whose property was included in the rate, was summoned before the justices for the non-payment of the rate, and he objected to the validity of the rate on several grounds. The rate was abandoned and a fresh one made in the month of Septem-

her, when Griffiths objected, that the first rate was valid, and that there could not be concurrent rates. The justices refusing to enforce the second rate against the goods of Griffiths for the amount of the rate due from him, a rule was made absolute in Michaelmas Term last for a mandamus to compel them to grant a distress warrant. A rule was subsequently obtained on behalf of Griffiths, calling on the other parties to show cause why he should not be permitted, under the statutes 1 Will. 4, c. 21 s. 4, and 1 & 2 Will. 4 c. 58, s. 8, to join with the justices in framing a return to the writ of mandamus. Affidavits were adduced to show that a very hostile feeling existed between Griffiths and the parish officers of Broadway, at the time these transactions took place.

Mr. Martin and Mr. Greaves showed cause, and contended, that this being merely an application to the discretion of the court, sufficient reason had not been given for granting such a rule. The person resisting the payment of this rate does not appear to be acting *bona fide*. He does not allege that the rate is unequal, or that he is rated at a higher amount than he ought to be rated.

Mr. Chambers appeared for the justices, and stated, that their duties could not be properly discharged if this person was permitted to come in and join with them in making the return to the mandamus.

Mr. Pashley, in support of the rule. The applicant states in his affidavit, that there are five objections to the rate, and that he makes the application in order that the validity of the rate may be brought before the court in a proper manner on the return to the mandamus. He does not state that his property is rated too high, because that is a ground of appeal, and not a question to be submitted to the consideration of the court.

Lord Denman, C. J. The words of the act of parliament gives us a discretionary power in this matter, and in the present instance I am clearly of opinion that leave ought not to be given to the applicant to take part in framing the return to this mandamus. The question is, whether he is or is not to pay a rate which he does not say is unequal or unjust, but respecting which, merely to gratify the bad passions he is actuated by, he desires to start some points which he does not even now say he believes to be good. I think that no such indulgence ought to be shown him—no useful object could be gained by it. It is much more important that the poor should be maintained and the burdens of the parish borne by those who can bear them.

Mr. Justice Patteson said, that some reasonable ground for such an application as this ought to be shown. The court could not be called on to let in everybody who said he wanted to press a claim—he must first establish a right to do so. In this case nothing of this sort was shown—it was merely a frivolous object which the applicant wished to gain, and such an attempt ought not to be encouraged.

Mr. Justice Coleridge. I am of opinion that this application ought to be refused. I think the objections made are totally beside the merits of the case, and on that ground I am of opinion that the application ought not to be granted.

Mr. Justice Erle. I am of the same opinion. It is very important that the poor-rate should be collected without delay, and I think that there is no substance in any of these objections.

Rule discharged with costs.

Queen's Bench Practice Court.

Reg. v. The Justices of Gloucestershire. Hilary Term, Jan. 16, 1847.

(*Coram Erle, J.*)

ORDER OF AFFILIATION.—NOTICE.

On an appeal against an order of affiliation the attorney for the respondent gave a written undertaking to admit the due service of the notice of recognizances, the attorney for the appellant undertaking to produce them at the trial. The order of affiliation bore date the 3rd April, and the sessions were holden upon the 30th: Held, that the sessions were justified in finding a due service of the notices.

THIS was a summons calling upon the justices of Gloucestershire to show cause why a *certiorari* should not issue to bring up to this court an order of sessions quashing an order of affiliation, with a view of quashing the order of sessions, on the ground that the justices had no jurisdiction to make it. The summons was originally returnable at chambers in vacation, but being adjourned to a day in term, it was afterwards on the motion of *Wise* for the prosecution, and with the consent of *Greaves*, for the defendants, afterwards adjourned to courts it being necessary in term time that the *certiorari* should be granted by the court. The order of affiliation was made on the 3rd April, the sessions being holden on the 30th of that month. The attorney for the respondent had given to the attorney for the appellant the following undertaking under his hand:—"I hereby admit the due service of the notice of bail and appeal given herein to the respondent, Mr. Chesshyre undertaking to produce the original notices on the hearing of this appeal, together with the order." The notices when produced bore date the 29th April, and it was thereupon contended by the respondent, that the notices were not served "forthwith" within the meaning of the statute, and that the justices, therefore, had no jurisdiction. The sessions have decided that they had jurisdiction, and heard the appeal.

Greaves now showed cause, and submitted that the justices were right. There was evidence to justify them in finding that the notices were duly served.

Wise, contra, contended, that as the notices were not served until the 29th April, they were not served forthwith, and that as this went to the jurisdiction of the justices, the respondent could not waive the objection even if she were willing to do so. He cited *Reg. v. Lord Hastings and*

another, 6 Q. B.; *Sharpe v. Lamb*, 11 Ad. & Ell. 805; *Vane v. Whittington*, 7 Dow. 757; Ib. 102; R. & J. J. *Worcestershire (Lowe v. Owen)*, 1 Bail Court. Rep.

Erle, J. I think the *certiorari* ought not to go. There was evidence from which the justices could find that the notices were duly served, and I ought not therefore to interfere. I do not put it on the question of waiver, but on the ground that there was evidence of the due service. "Forthwith" does not mean immediately, but without unjustifiable delay; and it may be that there was good reason for the delaying the service, or it may be that the notices were wrongly dated.

Application refused.

CHANCERY SITTINGS.

Lord Chancellor.

After Hilary Term, 1847.

Monday	Feb. 8	{ The 1st Seal—Appeal Motions.
Tuesday	9	{ Appeals.
Wednesday	10	
Thursday	11	
Friday	12	{ (Petition-day,) Unopposed Petitions, and Appeals.
Saturday	13	{ Appeals.
Monday	15	
Tuesday	16	
Wednesday	17	{ (Petition-day,) (Unopposed Petitions, and Appeals.
Thursday	18	
Friday	19	
Saturday	20	{ Appeals.
Monday	22	
Tuesday	23	
Wednesday	24	{ The 2nd Seal—Appeal Motions.
Thursday	25	{ Appeals.
Friday	26	{ (Petition-day,) Unopposed Petitions and Appeals.
Saturday	27	{ Appeals.
Monday	March 1	
Tuesday	2	
Wednesday	3	{ (Petition-day) Unopposed Petitions and Appeals.
Thursday	4	
Friday	5	
Saturday	6	{ Appeals.
Monday	8	
Tuesday	9	
Wednesday	10	{ The 3rd Seal—Appeal Motions.
Thursday	11	{ Appeals.
Friday	12	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday	13	{ Appeals.
Monday	15	
Tuesday	16	
Wednesday	17	{ Petition-day (unopposed only) and Appeals.
Thursday	18	
Friday	19	
Saturday	20	{ Appeals.
Monday	22	
Tuesday	23	
Wednesday	24	{ The 4th Seal—Appeal Motions.
Thursday	25	{ General Petition-day.

N. B.—Such days as his Lordship is occupied in the House of Lords excepted.

Master of the Rolls.

AT THE ROLLS.

Monday Feb. 8 Motions.

AT THE JUDICIAL COMMITTEE.

Tuesday 9 to Friday 19, inclusive.

AT THE ROLLS.

Saturday	20	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Monday	22	
Tuesday	23	
Wednesday	24	{ Motions.
Thursday	25	{ Pleas, Demurrers, Causes, Fur. Directions and Exceptions.
Friday	26	
Saturday	27	
Monday	March 1	{ Pleas, Demurrers, Causes, Fur. Directions and Exceptions.
Tuesday	2	
Wednesday	3	
Thursday	4	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday	5	
Saturday	6	
Monday	8	{ Motions.
Tuesday	9	
Wednesday	10	
Thursday	11	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday	12	
Saturday	13	
Monday	15	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday	16	
Wednesday	17	
Thursday	18	{ Motions.
Friday	19	
Saturday	20	
Monday	22	{ Petitions in the General Paper.
Tuesday	23	
Wednesday	24	
Thursday	25	{ Petitions in the General Paper.

Short Causes, Consent Causes, and Consent Petitions every Saturday at the sitting of the court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor of England.

AT LINCOLN'S INN.

Monday	Feb. 8	{ The 1st Seal—Motions.
Tuesday	9	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	10	
Thursday	11	
Friday	12	{ (Petition-day) Petitions (unopposed first,) Short Causes, and Causes.
Saturday	13	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	15	
Tuesday	16	
Wednesday	17	{ (Petition-day) Petitions, (unopposed first) Short Causes, and Causes.
Thursday	18	
Friday	19	
Saturday	20	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	22	
Tuesday	23	
Wednesday	24	{ The 2nd Seal—Motions.
Thursday	25	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Friday 26	{ (Petition-day) Petitions, (unopposed first,) Short Causes, and Causes.	Thursday 25	{ Pleas, Demurrers, Exceptions, Causes and Further Directions.
Saturday 27		Friday 26	{ (Petition-day.) Petitions and Ditto.
Monday . . . Mar. 1	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Saturday 27	{ Short Causes and Causes.
Tuesday 2		Monday . . . March 1	{ Bankrupt Petitions and Causes.
Wednesday 3		Tuesday 2	{ Pleas, Demurrers, Causes, Exceptions, and Further Directions.
Thursday 4		Wednesday 3	{ Bankrupt Petitions and Ditto.
Friday 5	{ (Petition-day,) Petition, (unopposed first,) Short Causes, and Causes.	Thursday 4	{ Pleas, Demurrers, Causes, Exceptions and Further Directions.
Saturday 6	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Friday 5	{ (Petition-day,) Petitions & Ditto.
Monday 8		Saturday 6	{ Short Causes and Causes.
Tuesday 9		Monday 8	{ Bankrupt Petitions and Causes.
Wednesday 10	{ The 3rd Seal—Motions.	Tuesday 9	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday 11	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Wednesday 10	{ The 3rd Seal—Motions and Ditto.
Friday 12	{ (Petition-day.) Petitions, (unopposed first,) Short Causes, and Causes.	Thursday 11	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday 13		Friday 12	{ (Petition-day,) Petitions and Ditto.
Monday 15	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Saturday 13	{ Short Causes and Causes.
Tuesday 16		Monday 15	{ Bankrupt Petitions and Causes.
Wednesday 17		Tuesday 16	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday 18		Wednesday 17	{ Bankrupt Petitions and Ditto.
Friday 19	{ (Petition-day,) Petitions, (unopposed first,) Short Causes, and Causes.	Thursday 18	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday 20		Friday 19	{ (Petition-day) Petitions and Causes.
Monday 22	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Saturday 20	{ Short Causes and Causes.
Tuesday 23		Monday 22	{ Bankrupt Petitions and Causes.
Wednesday 24	{ The 4th Seal—Motions.	Tuesday 23	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday 25	{ General Petition-day.	Wednesday 24	{ The 4th Seal—Motions.
Friday 26	{ Short Causes and Petitions.	Thursday 25	{ General Petition-day.

Vice-Chancellor Knight Bruce.

Monday . . Feb. 8	{ The 1st Seal—Motions and Causes.
Tuesday 9	{ Pleas, Demurrers, Causes, Exceptions, and Further Directions.
Wednesday 10	{ Bankrupt Petitions and Ditto.
Thursday 11	{ Pleas, Demurrers, Causes, Exceptions, and Further Directions.
Friday 12	{ (Petition-day) Petitions and Ditto.
Saturday 13	{ Short Causes and Causes.
Monday 15	{ Bankrupt Petitions and Causes.
Tuesday 16	{ Pleas, Demurrers, Causes, Exceptions, and Further Directions.
Wednesday 17	{ Bankrupt Petitions, and Ditto.
Thursday 18	{ Pleas, Demurrers, Causes, Exceptions, and Further Directions.
Friday 19	{ (Petition-day) Petitions and Ditto.
Saturday 20	{ Short Causes and Causes.
Monday 22	{ Bankrupt Petitions and Ditto.
Tuesday 23	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday 24	{ The 2nd Seal—Motions and Causes.

Vice-Chancellor Stirling.

Monday . . Feb. 8	{ The 1st Seal—Motions and Causes.
Tuesday 9	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday 10	
Thursday 11	
Friday 12	{ Short Causes, Petitions, (unopposed first,) and Causes.
Saturday 13	
Monday 15	
Tuesday 16	{ Pleas, Demurrers, Exceptions, and Further Directions.
Wednesday 17	
Thursday 18	
Friday 19	
Saturday 20	{ Short Causes, Petitions, (unopposed first,) and Causes.

Monday . . . 23	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Wednesday . . . 10	The 3rd Seal—Motions.
Tuesday . . . 23		Thursday . . . 11	
Wednesday . . . 24	The 2nd Seal—Motions and Causes.	Friday . . . 12	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday . . . 25		Saturday . . . 13	
Friday . . . 26	Pleas, Demurrers, Exceptions, Fur. Dirs., and Causes.	Monday . . . 15	Short Causes, Petitions (unopposed first,) and causes.
Saturday . . . 27		Tuesday . . . 16	
Monday March 1	Short Causes, Petitions, (unopposed first,) and Causes.	Wednesday . . . 17	Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday . . . 2		Thursday . . . 18	
Wednesday . . . 3	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Friday . . . 19	Short Causes, Petitions, (unopposed first,) and Causes.
Thursday . . . 4		Saturday . . . 20	
Friday . . . 5	Short Causes, Petitions, (unopposed first,) and Causes.	Monday . . . 22	Pleas, Dem., Exceptions, Causes, and Fur. Directions.
Saturday . . . 6		Tuesday . . . 23	
Monday . . . 8	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	Wednesday . . . 24	The 4th Seal—Motions and Causes.
Tuesday . . . 9		Thursday . . . 25	
		Friday . . . 26	General Petition-day.
			Short Causes and Petitions.

PRIVY COUNCIL APPEALS.

February, 1847.

APPELLANTS.		RESPONDENTS.		SOLICITOR OR PROCTOR.	
Geils	Geils	Iggulden and Puckle	Jenner, Dyke, & Jenner		
House of Assembly at Grenada	Chief Justice Sanderson	Wilde and Rees	Cotterill.		
Stone	Stone	Smale	Pitcher.		
J. P. Wise	Kishenkoomar Bous	Whitmore and Walters (ex pte.)			
Minchin	Judges of Supreme Court of Madras	Goodeve (ex pte.)			
Sidney Stephen	Judges of Supreme Court of Van Dieman's Land	Sir G. Stephen (ex pte.)			
Davis	Barrett	Teesdale and Symes	Clayton and Cookson.		
Caledonian Towing Comp.	Hutton	Deacon	Rothery.		
Mayor of Hamilton	Hodgson	Wilson and Harrison	Coope and Browne.		
Bernard	Hyne	Bowdler and Bathurst	Stephen and Bedford.		
Ramruton Rae	Furrook-oon nissa	Sutton and Ewens	Desborough and Young.		
Mussunat Golab Koonwar	Collector of Benares	R. Clarke	Lawfords.		

BUSINESS OF THE COURT IN BANC.

Common Pleas.

Hilary Term, 10th Vict.

THIS court will, on Monday, the 15th day of February instant, hold a sitting, and proceed to give judgment in some of the cases standing over for the consideration of this court.

NISI PRIUS CAUSE LISTS.

Middlesex.

REMANETS added to List at page 264, ante.

Queen's Bench.		
Lewis and L.	Hughes	S. J. Mousley
Cox and W.	The Mayor of Oxford	S. J. Tagg
Marsden	Cruikshank	Harrison
D. Kerne	Waddy	S. J. Collinridge and another
Julius and Co.	Julius and another	Wetherell, clk.
Ward	Fleming	King
Allen and M.	Wilkinson	Bleaden
Geo. Price	Grafton	Arnott
R. K. Lane	Fisher	S. J. Ashwell
Daves	Andre	Saunders
Person	Richards	S. J. Lord Maidstone
J. Fallows	Bassan	Latter and another
Bebb and R.	Gifford	Robertson
C. B. Wilson	Wade	Gregory
R. K. Lane	Clayards	Dethick and another
Same	Giles and another	Baker
John Watson, jun.	Christie	Benjamin
Denton	Baker	Mushell
Richardson	Matthews	Crossley executor, c.
		Dt. Few and Co.
		Dt. Litchfield
		Dt. Pike
		Dt. Person
		Dt. Person
		Tres. Phillips
		Dt. W. E. Oliver
		Bird and Co.
		Sharp F. and Co.
		Ca. Lovell
		Pro. Keightley and Co.
		Dt. Minet and S.
		Dt. Person
		Prom. W. Kennett
		Ca. Hughes and T.
		Covt. Watson and Son
		Tres. S. Yates
		Prom. Pearson
		Moss

Allen and N. Person	Hardyman	Townshend, sued, &c.	Dt. G. R. Innes
H. Codd	Flower	S. J. Maskelyne	Kearney and Co.
Ravenscroft	Lamond and others	Erlam	Ogle and Y.
T. G. Steadman	Powter	Harrison	Dt. C. O. Hoare
Lewis	Rossiter and wife (pauper)	Janes	Ca. Mills
J. Tinslay	Lewis	Clifton, an infant	Pro. Rickards and Co.
Same	Luck	Brown and another	Tres. F. Walthew
W. Smith	Dear (pauper)	Rapson	Tres. King and A.
Hall	Watson and another	Tweed	Prom. Person
Edward Vann	Martindale	Seward	Issue, Foord
John Long	Davis	Isley	Tres. John Nokes
Walker	Standon	Bird	Ca. Bartley and S.
Gabriel and M.	Walker	Webb	Prom. Webb
Moseley	Helps	Barford	Prom. T. A. Jones
Lacy and B.	Doe d. Rule	Cussans	Ejt. Person
Makinson and S. Person	Baily and another	S. J. Law	Prom. Smith
In person	Watts and others	Ryan	Reynolds
Curling	Atkinson	Walsh	Prom. Person
Bower and Son	Fyson and another	Pym	Dt. Richardson
H. B. Jones	Fyson	Pym	Dt. Same
John Bell	Hoof and others	Young	Prom. Walker
W. Williams	Doe dem. Ross	Sparke	Tres. and Ejt. Strick
Dolman and S.	Honiball	Blunt	Prom. A. Haynes
Same	Ward	M'Henry	Dt. S. Collyer
Same	Feltham	Headland	Prom. C. Champion
Chisholme	Spurway	Goff	Dt. F. F. Parnell
J. Lewis	Child	Dutton	Prom. Cornthwaite & Co.
Shearman	Bowman, admix.	Hodsoll	Prom. J. W. Flower
Willoughby and J. W. and Dyne	Alexander	Puge	Prom. Braham
	Daniels	Baxter	Tres. Wright and Co.
	Welch	Hallett	Prom. T. S. Wright
	Shaw	Rolleston	Ca. J. H. Webber

NEW CAUSES.

Holme and Co.	Chadwick	Bayly	Dt. Dangerfield
Tennant and H.	The Queen	S. J. Straford	Indt. Price and B.
Milton and Co.	Smithson, admix. &c.	Bothams	Covt. Hutchison [Co.
Marsden	Carr	Taylor	Tres. Oliverson, Lavie and
Dunn	Doe d. Bacon & ots.	S. J. Carnegie	Eject. Elderton
Hayes	Netherliff	Hoare	Prom. Howell
Cragg and J.	Cowburn	S. J. Simpson and another	Sharpe and Co.
Carlton and H.	Cumming	Ince and others	Prom. Turnley
Norcutt	The Queen	Black, clk.	Lonsdale
Williamson	Rudd and others	Milne and another	Dt. Jaques and E.
Angell	Woolley	Marks	Chadwick
Same	Cates	Smith and another	Holmes
Orlebar	Loaring, by next friend	Kennion	Dt. S. Winter
W. S. Dacie	Lewis and another	Stacy	Dt. R. Southco
Vickery	Davidson and another	Rawlins	Ca. F. Smith
Jones and Sons	Latchford	Symonds	Dt. Goddard and E.
Cox and S.	Doe d. Brandon & another	Jones	Eject. J. S. Kipling
John Hughes	Doe d. Blackstone & others	White	Eject. A. J. Lane.
Williamson and H.	Bulmer	Miles and another	Tres. T. A. Jones
Ablett	Dunn	Pegrum	Prom. Schultz
King and A.	Falkner and another	S. J. Waller	Trov. C. Pearson
S. G. Rawlins	Rawlins	Smith	Prom. Hayton
W. S. Paine	Robbin	Randall	Prom. Fuller and S.
Hawkins and Co.	Dudding and another	Sherwin	Dt. Tilson and Co.
Person	Ford	Eliz. Thynne, com. called &c.	Prom. Person
Jennings	Hitchcock	Baylis	Prom. Jones and Co.
J. L. Dale	The Queen	Broome	Indt. Rickards and W.
F. Hobler	The Queen	Gompertz and others	Indt. Smith and Co.
Dickson and O.	Doe d. Frost	Alderson and another	Eject. Dangerfield
Sargent	Brazier	Stredder and another	Ca. Graham
Harbin and W.	Doe d. Budge	Smith	Eject. Davis and E.
Mitton and Co.	Knapton	Correy	Prom. Hook
T. C. Church	Doe d. Fowler	Chilton	Eject. Person
Downes and Co.	Gilbert	Price, Bart.	Prom. Mawe
Same	Downes	Price, Bart.	Prom. Mawe
W. M. Webster	Laurie, Knt. and others	Cook	Assumpt. E. J. Randall
J. Lewis	Roberts	S. J. Back and others	Prom. Wilkinson and Co.
B. Mewburn	Moginie	Field, exor.	J. T. Grover
Melton	Rumball	Wells	Prom. Woodward
John Pike	Cocks	Marshall	Dt. Watson, jun.
Beart	Parker	Fabroni	Trov. Lewis and L.
J. W. Dolman	Watkins	Lyne	Prom. Hyde and Co.

Dawes	Hay	S. J. Cox	Prom. Chambers
Clarke and Co.	The Queen	Alexander	Indt. Person
Wm. Black	Wale and wife	Johnson, sen., and another	Tres. Ashley
Waite	Haselden	Myers and another	Dt. Garry
Parkes	Atkinson	Liddiard	Edwards and W.
Same	Same	Foster	Denné
A. Haynes	Nevile	Deacon	F. Issue, W. Hodgkinson
Warnesford	Duke of Brunswick	Ghislin	Ca. H. Crocker
Parker	Brunel	Cook	Prom. Person.
Champion	Churchill	Erkstein	Prom. Heathfield
Gell and H.	Bretring	Bunn	Prom. Lewis and L.

Common Pleas.

To the List of REMANETS at page 237, *ante*, the following causes are to be added.

Capes and S.	Joll and another	S. J. Downes	Dt. Bennett and B.
R. Hare	Benton	S. J. Crafts	Tres. Fourdrinier
E. M. Elderton.	Newton, Esq.	S. J. Hill, Knt.	Prom. Giles and Co.
Chamberlayne and M.	Edwards	S. J. Mytton	Dt. Rickards and W.
Crouch	Granger	Mayhew	Ca. Boydell and Co.

NEW CAUSES.

Staniland and L.	Good	Hewes	Dt. Beevor and B.
J. Duncan	Stead	S. J. Williams	Ca. Hodgson and B.
Clarton and S.	Hargrave	Hargrave	Prom. W. and R. B. Baker
Carlton and H.	Benson	Williams, Clk.	Prom. Pater
B. W. Nind	Toby	Lovibond	Cov. A. Wolston
Haynes	Haynes	Austin	Prom. Ablett
E. Clarke	Lamb	Jackson	Tres. Dickson and O.
Gillham	Spencer	Chaplin and another	Ca. Morphatt
J. and G. Turner	Pierce and another	Feldmann	Dt. Coode, B. and Co.
Burrell and Son	Hills	Croll	Covt. Wire and Child
Sudlow	Rodgers and others	Powell and another	Ca. Johnson and Co.
W. H. Turner	Mears and another	Westcott	Prom. Rickards and W.
Burgoyne and Co.	Hopwood	Whaley	Dt. Robson
Thompson and P.	Thompson	Lack	Co. Asprey
Wollen	Barnes, admr.	Ward	Case. Parsons
Harbin and Co.	Janes	Fowler	Prom. J. Rosson
Davies, Son and B.	Benson	Haig	Prom. Pocock and M.
Same	Stammers	Taylor	Dt. Carlon and H.
Same	Still, exor., &c.	Evans, admor., &c.	Dt. G. Vincent
Richard and Collett	Ward	S. J. Key	Case. Woolley
Walker, Grant and Co.	Giles and another	Moneyppenny	Dt. Smith and Son
Same	Same	Bryant	Dt. Palmer and Co.
Same	Same	Tooth	Dt. Same
Pain and Hatherley	Wills	Murray	Prom. Whitmore and Co.
Wilde and Co.	Bell, P. O.	S. J. A. G. Marriott	Prom. G. Hall
G. Hensman	Graham & ors., assignees	Ashwell	Case. Hall and Co.
J. Parker	Nutley	Batten	Dt. J. Gregory
Gresham	Toy and another	Tuplin	Prom. Townshend
C. Kaye	Miles	Pilbeam	Case. Cross
G. Lewis	Turner	Robinson	Case. Maltby and Co.
A. Warrand	Warrand	Lindsay	Dt. J. Person
D. Watson	Benham	Gray	Tres. W. Cox
Same	Doe d. Benham	Gray	Eject. Same
Philp	Russell, admix., &c.	Pitman, extrix., &c.	Dt. T. H. Johnston
Vallance and B.	Vallance and another	The Duke of Brunswick	Dt. Warneford
G. Lewes	Dore	Mivart	Prom. Woollen

Exchequer.

REMANETS added to List at page 288, *ante*.

Manning	Bentley	Holroyd	Pro. Rickards and W.
Sudlow and Co.	Hobson	S. J. O'Connor	Pro. Yates and T.
Jaques and E.	Hervy	S. J. Arden	Pro. Ogle and Y.
H. G. Robinson	Webster	S. J. West, otherwise Webster	Ca. Richardson and Y.
Gill	Hawkins	S. J. Enderby	Dt. Baxendale and Co.
Phillips and Son	Taylor	S. J. Rogers	Issue, Parsons
Everest and Co.	Goddard	S. J. Rumball	Dt. Melton

NEW CAUSES.

M. Thompson	Baker	S. J. Hagger	Pro. Pontifex
N. J. Whitcomb	Clayton	West	Pro. Shaw
Warneford	Edwards	Curtis	Tres. S. Smith
C. G. Jones	Chadwick	S. J. The Midland Rail. Co.	Pro. Parker and Co.
J. Humphreys	Shaw	S. J. Hinds and another	Pro. Moseley
G. Lewis	Dunn	S. J. Cox and others	Pro. Derby and R.
Pain and H.	Fulton	S. J. De Burgh	Pro. Brundrett and Co.
Gill and H.	Barker	Bradley	Dt. Sudlow and Co.
Same	Collins	Same	Dt. Same
Same	Edwards	Same	Dt. Same
Same	Fisher	Same	Dt. Same

Norton and S.	Doe	Wilde	Tress, Govett
G. Jay	Pearce	Few	Ca. Justice
Law	Jones	Sneyd	Pro. Jones and Co.
C. O. Hoare	Liles	Spearman	Dt. Robinson
Same	Hoare	Whitbourne	Dt. Pile
Loveland and R.	Chapton and others.	Pickens and another	Dt. Cox and S.
Justice	Tooley	Brown	Pro. Duncombe
Futvoyle and S.	Peyton	Wood	Dt. Savage
Gregory F. and Co.	Watt	Hadfield and another	Pro. Stevens and S.
W. Parsons	Baker	Lack	Pro. Asprey
Same	Same	E. J. Lark	Pro. Same
Finch and Co.	Venn and another	Southern	Dt. Gregory and Co.
Clarke and C.	Baugh and ux.	Lane	Covt. Becke
Irwin and F.	Wilson	Cornfield	Dt. J. Johnson
T. M. Wilkin and M.	Brown	Shaw	Dt. Pe arson
Same	Same	Shaw and another	Dt. Same
Weller	Sweeton and anr. exors.	Collier	Dt. In person [W.
Holme and Co.	Harcourt clk.	Reynolds and others	Pro C. Shaw—Richards &
Clarke and Co.	Nugent	The Midland Rail. Co.	Ca. Parker R. and Co.
Bell and Co.	Stentball and others	S. J. Grant and another	Dt. Nicholson and P.
Rae	Parrott	The Hon. F. Curzon	Pro. Harrison and D.
Clarke and Co.	Rawlins	Wellidge	Covt. Horsley
Michiel	Hart	Gassiot and ors. assees.	Pro. Gule
G. Pyke	Young	Judd and others	Pro. G. Smith
Baxters	Hewitt	Jurner, Esq.	Dt. Edwards and Co.
Same	Dent	Shehan	Dt. J. Humphry
G. H. Lewin	Allen	Sharpe	Repln. C. and J. Allen
Parker and Co.	Abbott	S. J. Daintree	Pro. Amory and Co.
Rivington	Autrobas	S. J. Birwell	Ca. Clarke F. and Co.
Geo. Waugh	Hitchcock, admor.	S. J. Beavan	Dt. I. Gull
Westmacott and Co.	Foster	S. J. Benson	Covt. R. Hodgson
Same	Picton	Iaft, sued, &c.	Dt. Rickards and W.
Same	Corlass	Bein, junr.	Pro. Shaw and R.
Gregory and Son	Taylor	S. J. Maitland	Dt. Hill and E.
Crocker	Davis	Marriot	Pro. Abraham and Son
J. H. Turner	Parkes	Trimen	Dt. Sutcliffe
Gregory F. and Co.	Stevens	S. J. Keating	Ca. Taylor and C.
Smith and Co.	Grove	Perkins	Pro. Maidon and P.
Hall and Co.	Richmond and another	Smith	Dt. Mitton and Co.
Beever and B.	Sanders and others	Edwards	Pro. Stronghill
Wellborn	Steele and others	Bowchur	Dt. Archer
Garrard	Belcher & ors. assees.	S. J. Pratt	Dt. Carlon and H.
W. Clarke	Craggs	White	Pro. Stevens and S.
Rodgers and P.	Johnson	Peacock	Dt. In person
E. Lambert	Marshall admix	Cockburn	Pro. W. B. James
S. Abrabams	Hands	Kingdom	Pro. Keightley
H. F. Adcock	Doe d. Dashwood	Dugdale	Eject W. Savage
Wright and Co.	Russell	Marquis Conyngham	Dt. Bendow
Same	Price the elder	Price the younger	Dt. Collins and R.
A. Haynes	Humphreys	Cites	Ca. Parker
A. Berkett and Co.	Clapham	Riwbone and another	Dt. Piercy and H.
In person	Wicking	Wicking	Dt. In person
Curling	Stokes	S. J. Collett	Tress, Coppock
L. H. Braham	Mac Namara	S. J. Fotheringham	Pro. Hammond
Walsh and F.	Pullinger	Shawe	Pro. Townshend
Same	Parry	Neild	Pro. Hoppe and B.
Pinero	Dawes and another	Sleats	Dt. Davis
Knox	Lee	Henson	Dt. Barrow
Beales and H.	Willington	Gurley	Ca. Capes and S.
Sudlow and Co.	Kimberley	Brear	Dt. H. B. Clarke
H. J. Turner	Warren	Segrew	Pro. Dine and Son
C. O. Hoare	Fleming	Duncan	Pro. Manning
Revolta	Macarthy	Parry	Tress, Lane and P.
W. Hodgson	Holloway	Pocock	Ca. In person
Dangerfield	Cannam and another	Chessman	Dt. Skinner
Same	Same	Johnson	Dt. Sharp and Co.
G. Lewis	James	Mann and another	Ca. W. Murrey
Everest and Co.	Scott	Scott	Dt. Brooke
Same	White	Wright	Pro. Mawe
J. W. Chappell	Dent	Goding and another	Ca. Lacy and Co.
E. A. Chaplin	Smith	Oakley	Dt. Gregory and Co.
Worpaald	Doe d. Loscomb	Clifford	Ejt. Gilbert and Co.
Palmer	Tebbutt	Harding	Pro. Jennings
Chilton and Co.	The Great Grimsby and	Cooper	
	Sheffield Junc. Rail. Co.		
Same	The Grimsby Dock Co.	Robinson	Dt. Sadlow and Co.
Same	Downman	S. J. Morewood	Dt. I. Hackeray
Same	Norris and another	Cooper	Dt. C. J. Jones
S. B. Abrahams	Goldshede	Shaw	Dt. Allen
			Pro. Nettleship

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 13, 1847.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

CONSTRUCTION OF STATUTES.

MR. MILLER'S LECTURE ON COSTS UNDER THE ATTORNEYS AND SOLICITORS' ACT.

It is now upwards of three years since the passing of the Act for consolidating and amending the Law of Attorneys; and the clauses particularly relating to costs having been frequently before the court, we had intended to collect and arrange those decisions for the information of our readers. This labour has been well performed by Mr. Miller, the Equity Lecturer at the Incorporated Law Society; and we are glad of the opportunity to report so much of his lecture on the 5th February as relates to this subject. Having completed the examination of the principles recognised by courts of equity in relation to the allowance of costs, Mr. Miller proceeded to consider the remedies given by the statute 6 & 7 Vict. c. 73, for the recovery of Costs, and the alterations effected by that statute in the law and practice of courts of equity with regard to costs.

In order, said the lecturer, to understand and appreciate the provisions of this important act, it is desirable to take a slight review of the state of the law and practice with regard to the recovery of costs previously to its being passed, but before doing so I cannot refrain from observing that the solicitors as a body owe the learned and eminent judge who is the author of it a debt of gratitude which cannot be repaid and which it is difficult even to estimate. Nor is this acknowledgment more due on account of the labour and pains that must have been bestowed by his lordship in preparing and settling the clauses of this im-

portant act, which provided for solicitors as it were a *constitution of their own*, than for the uniform conduct of his lordship in upholding the rights and interests of solicitors whenever opportunities offer. I have on numerous occasions watched with considerable interest the course pursued by his lordship when dealing with cases in which solicitors have been personally concerned, and I have invariably observed that while he exercises with unsparing severity the powers of the court in punishing improper practices, he never fails to prove his conviction that *the interests of the community are so bound up with the well-being of legal practitioners*, that it is impossible to degrade or lower the character or press upon the means of an honest and respectable solicitor, without at the same time inflicting a serious injury on the public at large.

The act which principally regulated the recovery of costs previously to the act of 6 & 7 Vict. c. 73, coming into operation, was the 2nd G. 2, s. 23, by the 23rd section of which it was declared “that no solicitor should commence any action for his fees, charges, or disbursements at law or in equity, until the expiration of one month after he should have delivered to the party to be charged therewith, or left for such party at his dwelling-house or last place of abode, a bill of such fees, charges, &c., written in a common legible hand in English, except law terms and names of writs, and in words at length, except times and sums, which bill was to be subscribed with the proper hand of such attorney or solicitor respectively. And upon the application of the *party chargeable* by such bill, or of any other person in that behalf authorized, unto the said Lord High Chancellor, or the Master of the Rolls, or unto any of the courts aforesaid, or unto a judge or baron of any of the said courts in which the business

contained in such bill, or the greatest part thereof in amount or value, should have been transacted; and upon the submission of the said party or parties, or such other person authorized as aforesaid, to pay the whole sum that upon taxation of the said bill should appear to be due to the said attorney or solicitor respectively, it should be lawful for the said Lord High Chancellor, the said Master of the Rolls, or for any judge or baron of the said courts respectively, and they were thereby required to refer the said bill and the said attorney or solicitor's demand thereupon, although no action or suit should be then depending in such court touching the same, to be taxed and settled by the proper officer of such court without any money being brought into the said court for that purpose; and if the said attorney or solicitor, or the party or parties chargeable by such bill respectively, having due notice, should refuse or neglect to attend such taxation, the said officer might proceed to tax the said bill *ex parte*; pending which reference and taxation, no action should be commenced or prosecuted touching the said demand. And upon the taxation and settlement of such bill and demand, the said party or parties should forthwith pay to the said attorney or solicitor respectively, or to any person by him authorized to receive the same, that should be present at the said taxation, or otherwise unto such other person or persons, or in such manner as the respective courts aforesaid should direct, the whole sum that should be found to be or remain due thereon, which payment should be a full discharge of the said bill and demand; and in default thereof, the said party or parties should be liable to an attachment or process of contempt, or to such other proceedings at the election of the said attorney or solicitor as such party or parties was or were before liable unto. And if, upon the said taxation and settlement, it should be found that such attorney or solicitor should happen to have been overpaid, then the said attorney or solicitor respectively should forthwith refund and pay unto the party or parties entitled thereunto, or any person by him, her, or them authorized to receive the same, if present at the settling thereof, or otherwise, unto such other person or persons, or in such manner as the respective courts aforesaid should direct, all such money as the said officer should certify to have been so overpaid; and in default thereof, the said attorney or solicitor respectively should in like manner be liable to an attachment or process of contempt, or to such other proceedings, at the election of the said party and parties, as he would have been subject unto if this act had not been made."

According to the terms of this act, an attorney or solicitor could not under any circumstances take proceedings for recovery of his bill until the expiration of a month after the delivery of a signed bill while the business contained in any such bill or some part thereof must have been transacted in one of the courts of law or equity, so that where the bill was

wholly for conveyancing, or parliamentary business, or any other business not within the above express provision, no taxation could be obtained, except under the general jurisdiction of the court after action brought or suit in equity. It is true the courts struggled as much as possible to give a more liberal interpretation to the act, and, therefore, it became the practice to order a taxation, even where only a few items related to matters at law or in equity; but this forced construction was in many instances neither just nor beneficial to solicitor or client.

Again, it was the practice of the courts to order taxation as a matter of course at any time after a bill of costs had been delivered, and even after it had been settled and paid, unless so long a time had elapsed since the payment as that the payment might be considered to have been acquiesced in.

A material relief, however, is afforded to solicitors by the provisions in the act of 6 & 7 Vict. c. 73.

By the 37th section of that act it is declared "that no attorney or solicitor, nor any executor, administrator, or assignee of any attorney or solicitor, shall commence or maintain any action or suit for the recovery of any fees, charges, or disbursements, for any business done by such attorney or solicitor, until the expiration of one month after such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor, shall have delivered unto the party to be charged therewith, or sent by the post to, or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a bill of such fees, charges, and disbursements, and which bill shall either be subscribed with the proper hand of such attorney or solicitor, or in the case of partnership by any of the partners, either with his own name, or with the name or style of such partnership, or of the executor, administrator, or assignee of such attorney or solicitor, or be inclosed in, or accompanied by a letter subscribed in like manner referring to such bill; and upon the application of the party chargeable by such bill within such month, it shall be lawful, in case the business contained in such bill or any part thereof shall have been transacted in the High Court of Chancery, or in any other court of equity, or in any matter of bankruptcy or lunacy, or in case no part of such business shall have been transacted in any court of law or equity, for the Lord High Chancellor, or the Master of the Rolls, and in case any part of such business shall have been transacted in any other court, for the Courts of Queen's Bench, Common Pleas, Exchequer, Court of Common Pleas at Lancaster, or Court of Common Pleas at Durham, or any judge of either of them, and they are respectively required to refer such bill and the demand of such attorney or solicitor, executor, administrator, or assignee, thereupon to be taxed and settled by the proper officer of the court in

which such reference shall be made, without any money being brought into court; and the court or judge making such reference shall restrain such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor from commencing any action or suit touching such demand pending such reference."

The cases provided for by this enactment are—1st, *the delivery of a bill by an attorney or solicitor, or his assignee or personal representative, or the sending the same by the post, the bill being either signed according to the requisition in the act of Gorge 2nd, or inclosed in or accompanied by a letter subscribed in like manner, referring to the bill.* And, 2ndly, the taxation, not only of bills relating to proceedings in the courts of law or equity, or in bankruptcy or lunacy, but also to bills relating to general business, the latter of which may be taxed under an order from the Lord Chancellor or Master of the Rolls.

It is then provided by the same section, that in case no such application shall be made *within the month*, that it shall be lawful for the reference to be made either upon the application of the attorney or solicitor, or the executor, administrator, or assignee of the attorney or solicitor whose bill may have been so delivered, sent, or left, or upon the application of the *party chargeable*, with *such directions* and subject to such conditions as the court or judge making such reference shall think proper.

And in regard to this enactment, it has been held in the recent case, *Ex parte Gaultskell*, 1 Phil. 576, that it is not necessary, even after the expiration of the month, to make any special application to the court, inasmuch as the Master of the Rolls has in those cases appended to the common order a special direction that the Master's report shall be obtained within a month, unless the Master shall certify that further time is necessary, which, therefore, although in an order of course, was held to be a sufficiently special direction to be a compliance with the terms of the act.

In that case it was contended by the counsel for the solicitor, that inasmuch as the act directed that after the expiration of a month the order should be made with such directions and subject to such conditions as the court or judge shall think proper, the reference must after that time be the subject of a special application; but Lord Lyndhurst said, that although it was true the act contained such a requisition, yet there immediately followed a proviso, that after twelve months had elapsed from the delivery of the bill, or a verdict had been obtained for the amount, no such reference shall be directed except under special circumstances to be proved *to the satisfaction of the court or judge, to whom the application shall be made.* In these last cases, therefore, there is to be examination and inquiry, and evidence of witnesses for the purpose of guiding the discretion

of the court, and when his lordship found that the legislature had distinctly provided for that course in this class of cases and not in the other, his lordship thought he was justified in coming to the conclusion, that in the latter class of cases it was not necessary to institute any inquiry or examination before the order was made, but that the legislature intended that directions should be given in the order with reference to the state of the proceedings as contained in the petition, subject of course to this, that if the party applying misrepresents the circumstances, the order will be discharged, on the ground that the court in making it has been misled. With that qualification, his lordship thought there was no danger in making orders of course in different forms to different states of circumstances.

The act having disposed of ordinary applications, that is, of cases where the reference may be obtained by an order of course, next proceeds to deal with cases where a special application is necessary. And by the same section (37) it is provided, that no such reference shall be directed upon an application made by the *party chargeable* with such bill after *verdict shall have been obtained, or a writ of inquiry executed in any action for the recovery of the demand of such attorney or solicitor, or his executor, administrator, or assignee, or after the expiration of twelve months after such bill shall have been delivered, sent or left as aforesaid*, except under special circumstances, *to be proved to the satisfaction of the court or judge, to whom such reference shall have been made.* Then follows a power for enabling the taxing master to proceed *ex parte* in case either party neglects to attend, and a proviso for the payment of the costs of the taxation by the solicitor *in the event of a sixth being taken off*, and for charging the client with such costs in case less than a sixth shall be taken off. The taxing master is also authorized to state any circumstances specially relating to such bill or taxation, and the court may in like manner, where the order is made on a special application, give any special direction relative to the costs of the reference.

Another most important addition is made by this section to the provisions of the 2 G. 2, c. 23, by enabling the court to embrace in the order for taxation, a direction to the solicitor *to deliver* a bill, and also to deliver up all deeds and documents in his hands belonging to the client.

The proviso in the act is, that it shall be lawful for the court and judges in the same cases in which they are authorised to refer a bill to make such order for the delivery up of deeds, documents, or papers, in the same manner as has heretofore been done where any business had been transacted in the court in which such order had been made. Before the act of 6 & 7 Vict. c. 73, there was no power by statute to compel the delivery of a bill, or the delivery up of papers, and although the courts

were in the habit of exercising the power under their general jurisdiction over attorneys and solicitors, still difficulties frequently arose, and where the costs were entirely for conveyancing or general business, the power was not exercised.

It is also provided by the same section, (37,) that it shall not in any case be necessary in the first instance for an attorney or solicitor, or his executor, or administrator, or assignee, in proving a compliance with the act, to prove the contents of the bill he may have delivered, sent, or left, but merely to prove that a bill was delivered, sent, or left, although it is competent for the other party to show that the bill so delivered, sent, or left, was not such a bill as constituted a *bona fide* compliance with the act, and at the conclusion of the same section the just and important power is also given to any judge of the superior courts of law or equity to authorize an attorney or solicitor to commence an action or suit for the recovery of his fees, charges, or disbursements, against the party charged therewith, although one month shall not have expired from the delivery of a bill as aforesaid, on proof to the satisfaction of the said judge that there is probable cause for believing that such party is about to quit England.

By the 38th section power is given to any party who shall be liable to pay or shall have paid any such bill, although *not the party chargeable*, to obtain the same order for taxation as the party chargeable might have obtained: but in case a special reference is necessary, the court is at liberty to take into consideration any special circumstances, although they might not be applicable to the party chargeable.

The 39th section provides for the cases of *trustees, executors, or administrators*, who may have become chargeable to costs, and it authorizes the *Lord Chancellor or Master of the Rolls*, upon the application of *any party interested*, to make a reference for taxation, but declares that if upon any such taxation, any money shall be directed to be paid by the attorney or solicitor whose bill is so referred, the same shall be paid to the trustee, executor, or administrator; and if the party applying for the taxation has to pay any money to the attorney or solicitor, that he shall have the same right to recover it from the trustee, executor, or administrator, as the attorney or solicitor would have had.

By the 40th section the court may, on the *application of any party not being chargeable*, or of a *party interested*, order a copy of the bill to be furnished on payment of the costs of such copy; but no bill which has been once taxed and settled can be again referred, unless under special circumstances. And the 41st section declares, that although payment of a bill shall not preclude the court or judge to whom application shall be made under the act from referring the same for taxation upon such terms and conditions as shall seem right, yet that application for such reference must be made *within twelve months after payment*.

The 43rd section directed the mode in which

applications for taxation shall be made, and declares that the certificate of the taxing officer by whom any bill shall be taxed shall, unless set aside or altered by order, decree, or rule of court, be final and conclusive *as to the amount thereof*, and that payment of the amount certified to be due may be enforced according to the course of the court in which any such reference is made; and if the reference be made by any court of common law, the court or any judge may order *judgment* to be entered up for the amount with costs, or make such other order as shall seem just.

Having thus stated the several important enactments of this statute relating to costs, Mr. Miller next examined the cases which have been decided with reference to the taxation of costs since the act came into operation.

The first case to which he directed attention related to the matters which may form the subject of taxation, and with reference to these it was held, in the case of *Allen v. Aldridge*, 5 Beav. 401, that the fees of a steward of a manor, who acts in that character only, although he may be a solicitor, are not taxable under the act; and it appears that the business in respect of which the charges sought to be taxed are made, must be *business connected with the profession of an attorney and solicitor*. In that case the Master of the Rolls said, "The question was, whether the charges of the steward of a manor who happens to be a solicitor, but was not employed as such, and who acted only as steward of the manor on the occasion in question, are taxable under the statute, and his lordship said he was of opinion they were not. The statute did not authorize the taxation of every pecuniary demand or bill which may be made or delivered by a person who is a solicitor *for every species of employment* in which he may happen to be engaged. The business in a taxable bill may be business in which no part was transacted in any court of law or equity, but it *must be connected with the profession of an attorney or solicitor*, or in which he would not have been employed if he had not been an attorney or solicitor, or if the relation of attorney or solicitor and client had not subsisted between him and his employer."

It has already been stated, that in *ex parte Gaitskill*, his lordship, the Master of the Rolls, has settled the form of an order which renders unnecessary any special application to the court even *after the expiration of a month* from the time when a bill was delivered, unless a verdict has been obtained, or a writ of inquiry has been executed, or *unless twelve months shall have expired* since the delivery of the bill,—in either of which cases special circumstances must be *proved* to the satisfaction of the court, which can of course only be done on a special application. The same point also came under consideration in the case of *In re Becke and Flower*, 5 Beav. 406.

It is not necessary that a bill should be

signed or accompanied by a letter signed by the solicitor, in order to enable a party chargeable with or liable to pay a bill, to obtain an order for taxation, although the requisition of the act in this respect must be complied with by a solicitor. *Re Pender*, 8 Beav. 299, affirmed on appeal, 10 Jur. 891; 33 Legal Observer, 43; and in *Re Bush*, 8 Beav. 66, it was held, that the delivery of a bill to an agent of the client, to whom the client requested it should be sent, was sufficient.

With reference to the costs of taxation given by the 37th section, it has been determined that the client is not entitled to the costs of taxation where the order for taxation is obtained after action brought, although more than one-sixth be taxed off. *Toghill v. Grant*, 6 Beav. 348.

The 38th section of the act gives the power to third parties who may be liable to pay, or shall have paid, a solicitor's bill, to obtain an order for taxation, and upon the construction of this section, as well as of the 41st section, which directs taxation after payment, several cases have occurred. In *re Lees*, 5 Beav. 410, an application was made by a mortgagor to tax the bill of the mortgagee's solicitor in relation to the mortgage and to the sale of the mortgaged property, and it was objected that the case was not provided for by the act, and that even if the 37th section applied, the court had no jurisdiction, as the whole of the business was done before the statute came into operation. But the Master of the Rolls said, that the relation of solicitor and client subsisted between the mortgagor and the solicitor whose bill it was desired to tax, and a joint bill being payable by the mortgagor out of the mortgaged estate, this was one of the cases in which the bill was made taxable under the statute, although no part of the business contained in it may have been transacted in any court of law or equity. And with regard to the objection as to the business having been completed before the act came into operation, his lordship said he entirely concurred in the opinion of Mr. Justice Patteson, who had held that the statute applied to matters which occurred before it passed, although the bills had been delivered before that time; and upon the latter point, viz., the retrospective operation of the act, his lordship expressed the same opinion in *re Rhodes*, 8 Beav. 224. The statute, however, does not authorize a mere volunteer under no previous liability to pay a solicitor's bill, and thereby to acquire a right to tax it, although the words of the act are, "any person who shall have paid such bill." This was intimated by the Master of the Rolls in *re Beck and Flower*, ante.

The 39th section gives the power to *cestui que trusts*, or persons interested in the estates of deceased persons, to obtain the taxation of bills relating to trust property; but applications under this section are regulated by the same principles as govern the applications by other parties, that is to say, if the application relates to an unpaid bill, it must be made under the provisions of the 37th section, as that relates

exclusively to unpaid bills; and if to a paid bill, under the 41st section; and, therefore, it was held, in *re Downes*, 5 Beav. 429, that the court would not, on the application of a party interested in trust property, make an order as against the solicitor for the taxation of his bill, if twelve months have elapsed after payment, although the *cestui que trust* may not have had notice of the payment. But the Master of the Rolls in the same case said, that if a trustee or executor has paid a solicitor's bill improperly, there is nothing in the act to prevent the court from ascertaining by taxation, if necessary, what is a proper sum to be allowed to the trustee or executor for his payment.

Upon the construction of the 41st section, a question arose in *Sayer v. Wagstaff*, 5 Beav. 415, whether, where the client gave his promissory note for payment of a bill, the twelve months within which the order must be made for taxation were to be calculated from the time the promissory note was given, or from the time it was paid; and also, whether the application for taxation must be considered as made on the day the petition is presented or on the day appointed for hearing; and with reference to the note, it was held that the debt must be considered actually paid, if the creditor at the time of receiving the note agreed to take upon himself the risk of the note being paid; but in the absence of any special circumstances, the transaction does not amount to a discharge of the original debt but a mere extended credit. And as to the other point, it was determined that the application must be considered as made when the time is appointed for hearing the petition on its being presented. It has also been held, with reference to this section, that the court cannot in any case send a bill for taxation after it has been paid more than a twelvemonth. *Re Downes*, 5 Beav. 429; and in *Barwell v. Brooks*, 7 Beav. 345, when the petition for taxation was presented within twelve months after payment, but in consequence of not specifying objectionable items, was held to be insufficient, the court refused to allow it to be amended, the twelvemonths having in the mean time expired. It must also be borne in mind, that it is not sufficient, in order to warrant an application under this section merely to show that payment was made under protest, or to allege generally that the bill contains objectionable and improper items and charges, but specific items must be objected to. In *re Thompson*, 8 Beav. 237, and if the questioned items are of a trivial character, no order will be made. Thus, in *Re Drake*, 1 Beav. 123, where a petition was presented within twelve months after payment for taxation of costs amounting to 11l. on the allegation, that it had been paid under protest, and a number of items were specified, amounting in the whole to 6l. 14s. 8d., which it was insisted were overcharges, the Master of the Rolls dismissed the petition, but not being satisfied that the items were correct, without costs. And in *Re Thompson*, 8 Beav. 239, his lordship said, he did not think an excessive item or one or more excessive items, were the only special

circumstances required by the act, but that among the special circumstances required, there must be a statement of some specific item which is erroneous, otherwise it was impossible to tell to what latitude the right to taxation after payment and settlement might be carried.

It may be added, that a bill included in an account settled between the client and the solicitor, and signed with the client's approval, is considered a payment within the meaning of this section. *Re Cuttlin*, 8 Beav. 121.

Having thus directed attention to all the cases which occurred to the lecturer as being material with reference to the construction that has been put upon the particular sections of the act, and with reference to the act generally, Mr. Miller observed,

"That where there has been any special agreement between parties relative to the payment or allowance of costs, the court is precluded from making an order for taxation, the only remedy in such cases being by bill to open the account. *Re Whitcombe*, 8 Beav. 140; *Re Rhodes*, ib. 224; *Re Thompson*, ib. 237; *In re Rhodes*; the Master of the Rolls said, 'I apprehend that the jurisdiction given to the court under the Solicitor's Act extends only to the ascertainment by the ordinary rules of practice of the *quantum* payable by one party to the other; and that it does not authorise the court to determine whether a special agreement does or does not exist between the parties as to the mode in which the taxation is to be made, or as to the manner in which the costs, charges and expenses are to be settled and paid. If it were otherwise, I scarcely know of any contracts respecting bills of costs, however special, which might not be drawn within the peculiar jurisdiction of the court, and have to be decided upon interlocutory applications.'"

The lecturer also observed,—

"That a *cestui que trust*, or third party, availing himself of the provisions of the act, may obtain the *common order* to tax, unless there are special circumstances, and that a party who makes a special application when he might have obtained the *common order*, will be ordered to pay the costs of the application, although he may be successful. *Re Brucey*, 8 Beav. 268."

Mr. Miller further noticed, that although applications under the act were generally made at the Rolls, they might be made to one of the Vice-Chancellors. *Re Carew*, 8 Beav. 128. He also observed, that under a *common order* to tax in equity a party may object to the allowance of costs for want of retainer, though he cannot do so at law. *Re Brucey*, 8 Beav. 268. And that it is one of the principles of taxation that the court will not interfere with the discretion of the taxing masters as to

the quantum of fees to be paid to counsel. *Attorney-General v. Lord Carrington*, 6 Beav. 454.

On a former occasion we pointed out one of the important principles of taxation laid down by the Master of the Rolls in the case of *Lucas v. Peacock*, 8 Beav. 1; but we deem it material to re-state his lordship's observations as adverted to by Mr. Miller in that part of his lecture in which he explained the alterations as to costs effected by the 120th Order of May, 1845.

"The effect," said Mr. Miller, "of this order is, to annihilate in a great measure the distinction between costs as allowed between *solicitor and client*, and those between *party and party*, and it proceeds upon that liberal basis which cannot fail to be most satisfactory to the profession, while it deals out a fair measure of justice to the suitors. And with reference to its construction, I may refer you with advantage to the case of *Lucas v. Peacock*, 8 Beav. 1, recently decided by his lordship the Master of the Rolls, and which is not more important for the principles established by it, than for the general views taken by the court with reference to the allowance of solicitor's costs. In that case a petition was presented to review the taxing Master's report, in consequence of his having disallowed the fees paid on a consultation between a new junior counsel and the former junior who had been promoted, and also the costs of a case laid before a counsel as to a supplemental bill, and also a double set of costs claimed by the solicitor who appeared for the plaintiffs and some of the defendants, and the court referred the report back to the Master to be reviewed. In opposition to the petition it was contended that it was incurring a useless expense, when a solicitor, acting on the part of defendants, took copies of documents which he already possessed as solicitor for the plaintiffs, whose interests were the same as those of his clients the defendants; and that it was equally so to serve himself as solicitor for the defendants with warrants taken out by himself as solicitor for the plaintiffs. And with reference to this objection, the Master of the Rolls said,— 'These petitions seem to involve one important point. If solicitors were always justly paid according to the real value of their services, it would be right to say that they should be entitled to payment only for that which has been of real service to their clients; but we all know that in practice and according to old established rules of taxation, solicitors are sometimes very ill paid, and in some cases are not at all paid for very important services rendered by them to their clients. If they are not allowed those fees which the practice sanctions, *they would not be adequately remunerated*. I should be glad to see such rules of practice established as would secure to them a sufficient remuneration for all real services, and exclude them from all

payment for services pretended or merely nominal, and not real. The discovery and establishment of such rules would be of great importance to both *solicitors and clients whose interests are the same*; but in the meantime and while a solicitor is not entitled to any remuneration, or is allowed a very inadequate remuneration for real services, I shall be slow to admit that he is to be deprived of any lawful fees which the established practice of the court warrants on the notion that the business charged for might have been of no practical benefit.”

BRIEF NOTES OF DECISIONS IN HILARY TERM.

WE proceed to lay before our readers short notes of the most important decisions in all the courts during Hilary Term, continued from page 323, *ante*.

POWER OF RAILWAY COMPANY TO IMPRISON.—BYE-LAW WHEN REASONABLE.

The act 4 & 5 Will. 4, c. 10, establishing the Croydon Railway Company, by section 106, empowers the company to make bye-laws and regulations for the government of the company, and of passengers travelling on the line, and to impose reasonable fines and penalties, not exceeding 5*l.*, for the breach of such regulations, which fines and penalties are to be recovered before a justice of the peace, under the 163rd section. The 138th section creates and describes certain offences, and the 165th section authorizes the company to seize and detain any person whose name is unknown, and who shall be found committing any offence against the act. Mr. Chilton, one of her Majesty's counsel, travelling in one of the company's first class carriages from Sydenham to London, accidentally lost his ticket, and could not deliver it when required so to do, upon the arrival of the train at the London terminus. He was therefore called upon to pay 1*s.* 3*d.*, the first class fare from Croydon to London, which he refused to do, but stated his willingness to pay 1*s.*, the first class fare from Sydenham to London, being the distance he had actually travelled. The servants of the company, upon his refusal to comply with their demand, took Mr. Chilton into custody, and he brought his action in trespass for false imprisonment. The defendants justified under a bye-law made in pursuance of the act, by which it was declared, that no passenger should be allowed to travel in the company's carriages until he had paid his fare, and that upon paying his fare he would be furnished with a ticket, which he might be called upon to produce at any time during the journey, and in case he neglected so to do, would be required to pay the fare from the most distant point of the line from which the particular train had come; and alleged that the plaintiff was a passenger in a train from Croydon to London, and as he had refused to pay the fare or produce his ticket, they had caused him to be

taken into custody. The plaintiff replied that he was not a passenger from Croydon to London, but from Sydenham to London, which was a less distance, and the defendants by their rejoinder denied that they had notice that the plaintiff was a passenger from Sydenham to London. To this rejoinder there was a general demurrer. In support of the demurrer it was argued, that the bye-law relied upon was unreasonable and invalid, and if acted upon, would enable the company to levy a larger amount of toll than they were authorized to do by the act of parliament. Even if the bye-law was valid, it did not authorize the defendants to take the plaintiff into custody. That power was only given where offences had been committed, not to enable the company to enforce their fares. On the other hand, it was insisted that the bye-law was reasonable on a short line like that of the defendants, and that it would be impossible to enforce it unless the company were at liberty to take into custody persons offending against the bye-law by refusing to produce their tickets or pay the prescribed fare. The Court of Exchequer was disposed to think the bye-law was reasonable having regard to the circumstances, but the sum to be demanded of passengers under the bye-law was in the nature of a fare not of a penalty. It was only where penalties were imposed under the act, that the legislature conferred power on the company to take persons into custody. There was no power to imprison passengers who committed no offence, but only declined to pay the fare demanded. Judgment was therefore given for the plaintiff. *Chilton, jun. v. The Croydon Railway Company*, 22 Jan. Exchequer.

INSUFFICIENCY OF AFFIDAVITS FOR DEFECTS IN FORM.

Every term furnishes instances in which parties are precluded from entering into the merits of their cases, in consequence of technical defects in the form of the affidavits on which they rely. In a cause of *Todd v. Simmonds and Hemming*, a rule was obtained upon an affidavit entitled, “*Todd v. Simmonds and Pricket, miscalled Hemming*.” As there was no such cause in court, Erle, J., held that the affidavit was wrongly entitled, and could not be used, and discharged the rule with costs. Queen B. Prac. Court, 27 January. Upon showing cause against a rule for an attachment for obstructing the service of process, two objections were successfully taken to an affidavit in which several deponents joined. As to one of the deponents, his addition did not appear in the affidavit,* and as to two others of the deponents, their names were not stated in the jurat, although the names had been signed by the deponents themselves opposite to the jurat, which it was contended

* In R. G. Hil. T. 4 Wm. 4, R. 5. *Rég. v. Reeve*, 4 Q. B. 211.

was insufficient.^b The court thought the informalities pointed out were fatal defects, and discharged the rule with costs. *Cobbett v. Oldfield*, 1 Feb. Exchequer.

PRODUCTION OF DOCUMENTS.—PROFESSIONAL PRIVILEGE.

A motion having been made for the production of letters and copies of letters scheduled in the answers of two defendants, the production was resisted on the ground of privilege. It appeared that Mr. Goldney, one of the defendants, in respect of whose letters the privilege was claimed, became trustee of a marriage settlement, and solicitor of one of the parties interested therein, under the following circumstances. In the former negotiation for a marriage between Mr. Hooper, one of the defendants, and a daughter of Mr. Free, a solicitor, Messrs. Tugwell and Meek acted as solicitors of the former, and Messrs. Goldney and Fellows as solicitors of Mr. Free and his daughter. At the same time there was a negotiation going on between Mr. Hooper and his solicitors, respecting a debt due to them, which Mr. Hooper proposed charging on his property by way of prior charge in the marriage settlement. The settlement was accordingly executed, and the marriage took place on the 28th of August, 1841; the trustees being Mr. Goldney and Mr. Borough. Disputes arose as to the amount of Mr. Hooper's debt to his solicitors, and in the discussions resulting therefrom, Mr. Goldney was employed as Mr. Hooper's solicitor, to get the accounts taken between them. The matter ended in a bill being filed by Mr. Hooper against Messrs. Tugwell and Meek, and also a Mr. Salmon, a retired partner, for the purpose of opening the accounts. Upon the institution of this suit, Mr. Goldney declined acting for Mr. Hooper therein, and Mr. Hooper thereupon employed Mr. Free, his father-in-law, to act as solicitor for him. Subsequently Messrs. Tugwell and Meek instituted the cross suit of *Tugwell v. Hooper* against the parties beneficially interested in the settlement, and against Mr. Goldney. The question was, under those circumstances, how far Mr. Goldney was protected.

Lord Langdale said a trustee for two parties could not act as a separate solicitor for one of them against the other, in the matters of the trust. As to the trust, he has a clear duty to do what was just and equitable to all, and nothing for one which may be prejudicial to the other. That being the duty of a trustee, the question was whether communications with one can be confidential or concealed from the other, under the cover of protection. No case like this was cited; but could a trustee, who was a solicitor, act for one *cestui que trust* in opposition to the other, and acquire knowledge of importance to the other? Some of the communications here had been with persons having

no interest, and not parties to the suit. Mr. Free had no interest, but he was not a stranger to the trust; and Mr. Hooper had full notice, and was a party to be benefited. In the absence of authority, the court ought not to sanction concealment. There was no imputation on Mr. Goldney. He only inadvertently placed himself in a position in which he could not do his duty equally to all. He could not divest himself of his office of trustee, and was not entitled to protection. The court therefore ordered the production of all the correspondence, excepting that portion which passed between Goldney and his solicitor, or town agents, after the institution of the cross suit in which he was made defendant. *Tugwell v. Hooper and others*. 1st Feb. Rolls C.

OFFICE FEES OF 10*l.* AND 20*l.* IN BANKRUPTCY: WHEN PAYABLE.

The act 1 & 2 Will. 4, c. 56, under which the Court of Bankruptcy is at present constituted, enacts by section 45, that there shall be paid to the Lord Chancellor's secretary of bankrupts, upon the granting of every fiat, the sum of *ten* pounds; and the 46th section further provides, that there shall be paid to the accountant-general, by the official assignee of each bankrupt's estate to be administered in the Court of Bankruptcy, out of the first monies that shall come into his hands, and immediately after the choice of assignees by the commissioners, the sum of *twenty* pounds. Several cases have lately come before the Court of Bankruptcy, where, in consequence of the insufficiency of the bankrupt's estate, or from other causes, no assignees have been chosen. In many of such cases applications have been made by the bankrupt or the solicitor to the fiat, for the return of the office fees of 10*l.* and 20*l.* if already paid, or that the solicitor's bill of costs should be made out of the bankrupt's estate, without any reserve being made for the office fees. The commissioners of bankrupts have not felt themselves authorised to grant such applications, and the practice has been to petition the Court of Review, the chief judge of which granted such applications in several instances.^c In a late case, however, where a similar petition was presented, the Chief Judge said that the Lord Chancellor had set this question at rest, by intimating his opinion upon it. That opinion, as his Honour was informed by Mr. Ayton, was, that whether there was any choice or not of assignees, the amount of the office fees ought to be retained. His Honour had, in several cases, come to a contrary conclusion on the ground that the subject ought not to be taxed unless by clear unequivocal expressions, and those of the act of parliament did not appear to his Honour to satisfy those conditions under the circumstances of cases of this description. However, of course, his Honour should for the future decide according to the opinion which the Lord Chan-

^b *Blackwall v. Allen*, 7 M. & W. 146. *Frost v. Hayward*, 10 M. & W. 673.

^c See *Ex parte Jerwood*, Leg. Ob. vol. 32, p. 472. *Ex parte Reynolds*, ib. vol. 32, p. 519.

cellor was understood to have expressed. The petition was therefore dismissed. *Ex parte Hemberg. In re Gex v. Cavendish.* Court of Review, 2nd Feb.

THE SMALL DEBTS ACT.

A supplement to the *Gazette* of Friday, 5th Feb., published Saturday, 6th, contains the following report of the Right Hon. the Lords of the Privy Council, dated the 3rd instant.

Your Majesty having been pleased, by your order in council of the 19th December last, to refer unto this committee for consideration an act, passed in the last session of parliament, intituled "An Act for the more easy recovery of small debts and demands in England," with directions to report to your Majesty their opinion upon the orders which it may be proper to make for the purposes of the said act :

The lords of the committee, in obedience to your Majesty's said order of reference, have taken the said act in consideration, and are pleased humbly to report, as their opinion, to your Majesty, that two orders in council, to the effect following, should be made for the purposes of the said act ; that is to say,

ORDER IN COUNCIL—No 1.

That on the 13th day of March in this year the several courts holden for the recovery of small debts or demands, under the provisions of any act or acts cited in one or both of the schedules annexed to the said act of the last session of parliament and marked (A) and (B) respectively (except the courts hereinafter more particularly specified), shall be abolished ; and that on and after the 15th day of March in this year the County Court of Middlesex, heretofore holden under the provisions of an act, passed in the 23rd year of the reign of his late Majesty King George 2, intituled "An Act for preventing delays and expenses in the proceedings in the County Court of Middlesex, and for the more easy and speedy recovery of small debts in the said county court," shall be holden under the provisions of the said act of the last session of Parliament, in the several districts into which the said county shall be divided, by any order to be made by your Majesty, with the advice of your privy council ; and also that each of the several Courts of Requests or Conscience heretofore holden for the recovery of debts and demands in the several cities, towns, and places hereinafter mentioned within the provisions of some one or more of the acts cited in the schedule annexed to the said act of the last session of parliament, and marked (A), shall be holden as a county court on and after the said 15th day of March, in the city or town hereinafter mentioned to be respectively appointed or substituted, instead of the city or cities, town or towns, place or places, in which such court was or might have been holden under the provisions of any of the said acts ; that is to say,

A court heretofore holden at Bath, under an

act passed in the 45th year of the reign of his late Majesty King George 3, intituled "An Act for the more speedy and easy recovery of small debts in the city of Bath and the liberties thereof, and in the several parishes and places therein mentioned, in the county of Somerset," shall be holden as a county court in the city of Bath.

Two courts heretofore holden at Bristol ; that is to say, one court holden under an act, passed in the 56th year of the reign of his late Majesty King George 3, intituled "An Act for the more speedy and easy recovery of small debts in the city and county of the city of Bristol, and the liberties thereof, and in the several parishes and places therein mentioned, in the counties of Gloucester and Somerset," and another court holden under an act passed in the first year of the reign of your Majesty, intituled "An Act for granting more effectual powers for the regulation of the Court of Conscience within the city of Bristol," shall be consolidated and holden as a county court in the city of Bristol.

A court, other than the Court of Passage, heretofore holden for the recovery of small debts in Liverpool, under an act passed in the 7th year of the reign of his late Majesty king Wm. 4, intituled "An Act to amend and render more effectual an act passed in the 4th and 5th year of his present Majesty, intituled 'An Act for amending the proceedings and practice of the Court of Passage of the borough of Liverpool, in the county palatine of Lancaster,' and to repeal an act passed in the 25th year of the reign of his late Majesty king Geo. 2, intituled 'An Act for the more easy and speedy recovery of small debts in the town and port of Liverpool, and liberties thereof, in the county palatine of Lancaster,' and to give further power for the recovery of small debts within the borough of Liverpool," shall be holden as a county court in the town of Liverpool.

A court heretofore holden for the manor of Sheffield, under an act, passed in the 48th year of the reign of his late Majesty king Geo. 3, intituled "An Act for regulating the proceedings in the courts baron of the manors of Sheffield and Ecclesall, in the county of York," shall be holden as a county court in the town of Sheffield :

And that the district to be assigned to each of the said courts, when so holden as a county court, shall be the district which by any order to be made by your Majesty, with the advice of your privy council, shall be specified as the district of the county court holden in each of the said cities and towns respectively.

ORDER IN COUNCIL—No. 2.

That on the 15th day of March in this year, the said act of the last session of parliament shall be put in force in every county throughout England and Wales ; and that the whole of the said counties, including all counties of cities and counties of towns, cities, boroughs, towns, ports, and places, liberties and franchises therein contained or thereunto adjoining (except the city of London), shall be divided into the several districts hereinafter specified,

and that the county court of each of the said counties shall be holden for the recovery of debts and demands under the said act, in each of the districts into which such county shall be so divided, in the several cities and towns hereinafter specified as court towns, or towns in which courts are to be holden, in each county, in conjunction with the said districts respectively, except in the districts hereinafter called metropolitan districts, in each of which the court shall be holden in some convenient place within such district; and in each district, except in the said metropolitan districts, the said court shall be holden by the name of "The county court of ," inserting in the first blank space the name of the county, and in the second the name of the town in which the court is to be holden; and in the said metropolitan districts the said court shall be holden by the name of "The county court of ," inserting in the first blank space the name hereinafter given to the court, and in the second the name of the county in which the court is to be holden.

And that in the description of the said several court districts hereunto annexed, unless where specific mention is made of particular parishes, chapelries, townships, tithings, hamlets, or precincts, the several places named are to be taken to mean and imply the several superintendent registrars' districts, bearing the like names respectively, which have been constituted pursuant to an act passed in the 7th year of his late Majesty king William 4, intituled "An act for registering births, deaths, and marriages in England," or pursuant to any act passed for the amendment thereof, as the same were severally constituted on the 19th day of December last past; save only that all parts of parishes and chapelries, townships, tithings, and hamlets, which are detached from the main body of the parishes and chapelries, townships, tithings, and hamlets to which such detached parts severally belong, and also all places (if any), parochial or extra-parochial, not included in the said description, shall be taken to be within the district of that court within the precincts and outer boundary of which they severally lie, or by which they are severally surrounded, or with which they have the greatest common boundary, if not wholly surrounded by any one court district; and that each of the said court districts shall be deemed to include also all rivers, creeks, harbours, and waters included within the outer boundary thereof, or thereunto adjoining, which are within the body of any county in England or Wales; and that when the districts of any two courts shall be divided by a river, the boundary line between the two districts shall be the mid-channel of such river; and that every place included within the outer boundary of the court districts so specified and described shall be taken to be within the jurisdiction of the county court holden for the purposes of the said act for the county in which the city, town, or place is situated where the court is ordered to be holden, or when such city, town, or place may

be situated in two or more counties, then of the county court holden for that county, under which such city, town, or place is mentioned in the description of the said several court districts hereunto annexed, in like manner as if it were part of such county. And that the description of the said several court districts, and the names of the cities, towns, and places where the courts shall be severally holden therein, are as follows: the first column containing the names of the court towns, (except in the said metropolitan districts,) and in the said metropolitan districts the names given to the said courts respectively; and the second column containing in every case the description of the districts for which the courts are to be holden therein; that is to say:—

Bedfordshire.—Amphill, Bedford, Biggleswade, Leighton Buzzard, Luton.

Berkshire.—Abingdon, Farringdon, Hungerford, Newbury, Reading, Wallingford, Wantage, Windsor.

Buckinghamshire.—Aylesbury, Buckingham, Chesham, High Wycombe, Newport Pagnell.

Cambridgeshire.—Cambridge, Ely, March, Newmarket, Soham, Wisbeach.

Cheshire.—Altrincham, Birkenhead, Chester, Congleton, Hyde, Knutsford, Macclesfield, Nantwich, Northwich, Runcorn, Stockport.

Cornwall.—Bodmin, Camelford, Falmouth, Helston, Launceston, Liskeard, Penzance, Redruth, St. Austell, St. Columb Major, Truro.

Cumberland.—Alston, Carlisle, Cockermouth, Keswick, Penrith, Whitehaven, Wigton.

Derbyshire.—Alfreton, Ashborne, Bakewell, Belper, Chapel-en-le-Frith, Chesterfield, Derby, Glossop, Wirksworth.

Devonshire.—Axminster, Barnstaple, Bideford, Crediton, Exeter, Holsworthy, Honiton, Kingsbridge, Newton Abbott, Oakhampton, Plymouth, South Molton, Tavistock, Tiverton, Torrington, Totnes.

Dorsetshire.—Blandford, Bridport, Dorchester, Poole, Shaftesbury, Wareham, Weymouth, Wimborne Minster.

Durham.—Barnard Castle, Bishops Auckland, Darlington, Durham, Gateshead, Hartlepool, Shotley Bridge, South Shields, Stockton-on-Tees, Sunderland, Wolsingham.

Essex.—Braintree, Brentwood, Chelmsford, Colchester, Dunmow, Halstead, Harwich, Maldon, Rochford, Romford, Saffron Walden, Waltham.

Gloucestershire.—Bristol, Cheltenham, Chipping Sodbury, Cirencester, Dursley, Gloucester, Newent, Newnham, Northleach, Stow, Stroud, Tewkesbury, Thornbury, Winchcomb.

Hampshire.—Andover, Alton, Basingstoke, Bishop's Waltham, Christchurch, Fordingbridge, Lympington, Newport, Petersfield, Portsmouth, Romsey, Southampton, Winchester.

Herefordshire.—Bromyard, Hereford, Kington, Ledbury, Leominster, Ross.

Hertfordshire.—Barnet, Bishop Stortford, Hertford, Hitchin, Royston, St. Alban's, Watford.

Huntingdonshire.—Huntingdon, St. Neot's.

Kent.—Ashford, Bromley, Canterbury, Dart-

ford, Deal, Dover, Faversham, Folkestone, Gravesend, Greenwich, Hythe, Maidstone, Margate, Ramsgate, Rochester, Romney, Sevenoaks, Sheerness, Sittingbourne, Tenterden, Tonbridge, Tonbridge Wells.

Lancashire.—Ashton-under-Lyne, Blackburn, Bolton, Burnley, Bury, Chorley, Clitheroe, Colne, Poulton, Garstang, Haslingden, Kirkham, Lancaster, Leigh, Liverpool, Manchester, Oldham, Ormskirk, Preston, Rochdale, St. Helen's, Salford, Ulverstone, Warrington, Wigan.

Leicestershire.—Ashby-de-la-Zouch, Hinckley, Leicester, Loughborough, Lutterworth, Market Bosworth, Market Harborough, Melton Mowbray.

Lincolnshire.—Barton-on-Humber, Boston, Bourne, Brigg, Caistor, Gainsborough, Grantham, Great Grimsby, Holbeach, Horncastle, Lincoln, Louth, Market Rasen, Sleaford, Spalding, Spilsby, Stamford.

Middlesex.—Brentford, Edmonton, Uxbridge.

Middlesex Metropolitan Districts.—Westminster, Brompton, Marylebone, Bloomsbury, Clerkenwell, Shoreditch, Bow, Whitechapel.

Monmouthshire.—Abergavenny, Chepstow, Monmouth, Newport, Pontypool, Tredegar, Usk.

Norfolk.—Attleborough, Aylsham, Downham Market, East Dereham, Harleston, Holt, King's Lynn, Little Walsingham, North Walsham, Norwich, Swaffham, Thetford, Wymondham, Great Yarmouth.

Northamptonshire.—Brackley, Daventry, Kettering, Northampton, Oundle, Peterborough, Thrapstone, Towcester, Wellingborough.

Northumberland.—Alnwick, Belford, Beltingham, Berwick, Haltwhistle, Hexham, Morpeth, Newcastle, North Shields, Rothbury, Wooler.

Nottinghamshire.—Bingham, East Retford, Mansfield, Newark, Nottingham, Worksop.

Oxfordshire.—Banbury, Bicester, Chipping Norton, Oxford, Thame, Witney, Woodstock.

Rutlandshire.—Oakham, Uppingham

Shropshire.—Bishop's Castle, Bridgenorth, Cleobury, Drayton, Ludlow, Madeley, Newport, Oswestry, Shrewsbury, Wem, Wellington, Whitchurch.

Somersetshire.—Bath, Bridgewater, Chard, Clutton, Crewkerne, Frome, Langport, Taunton, Wellington, Wells, Weston-super-Mare, Wilton, Wincanton, Yeovil.

Staffordshire.—Burton-on-Trent, Cheadle, Hanley, Leek, Lichfield, Newcastle-under-Lyme, Oldbury, Rugeley, Stafford, Stone, Uttoxeter, Wa'sall, Wolverhampton.

Suffolk.—Beccles, Bury St. Edmund's, Eyre, Framlingham, Hadleigh, Halesworth, Haverhill, Ipswich, Lowestoft, Mildenhall, Stowmarket, Sudbury, Woodbridge.

Surrey.—Chertsey, Croydon, Dorking, Epsom, Farnham, Godalming, Guildford, Kingston, Reigate, Wandsworth.

Surrey Metropolitan Districts.—Southwark, Lambeth.

Sussex.—Arundel, Brighton, Chichester, Cuckfield, East Grinstead, Hastings, Horsham, Lewes, Midhurst, Petworth, Worthing.

Warwickshire.—Alcester, Atherstone, Birmingham, Coventry, Nuneaton, Rugby, Solihull, Southam, Stratford, Tamworth, Warwick.

Westmoreland.—Ambleside, Appleby, Kirkby Kendal, Kirkby Lonsdale.

Wiltshire.—Bradford, Calne, Chippenham, Devizes, Malmesbury, Marlborough, Melksham, Salisbury, Swindon, Trowbridge, Warminster, Westbury.

Worcestershire.—Bromsgrove, Droitwich, Dudley, Evesham, Kidderminster, Pershore, Redditch, Shipston, Stourbridge, Tenbury, Upton, Worcester.

Yorkshire (East Riding).—Beverley, Bridlington, Great Driffeld, Hedon, Howden, Kingston-on-Hull, Pocklington.

Yorkshire (West Riding).—Barnsley, Boston, Bradford, Dewsbury, Doncaster, Goole, Halifax, Holmfirth, Huddersfield, Keighley, Knaresborough, Leeds, Otley, Pontefract, Ripon, Rotherham, Saddleworth, Selby, Settle, Sheffield, Skipton, Thorne, Todmorden, Wakefield.

Yorkshire (North Riding).—Easingwold, Helmsley, Leyburn, New Malton, Northallerton, Richmond, Scarborough, Stokesley, Thirsk, Whitby, York.

Anglesey.—Llangefni.

Brecknockshire.—Brecknock, Builth, Crickhowell, Hay.

Caermarthenshire.—Caermarthen, Llandeilo-fawr, Llandoverly, Llanelly, Newcastle-in-Emlyn.

Carnarvonshire.—Bangor, Carnarvon, Conway, Portmadoc, Pwllheli.

Cardiganshire.—Aberayron, Aberystwith, Cardigan, Lampeter.

Denbighshire.—Denbigh, Llanrwst, Ruabon, Ruthin, St. Asaph, Wrexham.

Flintshire.—Holywell, Mold.

Glamorganshire.—Bridgend, Cardiff, Merthyr Tydfil, Neath, Swansea.

Merionethshire.—Bala, Corwen, Dolgelly.

Montgomeryshire.—Llanfyllin, Llanidloes, Machynlleth, Newtown, Welchpool.

Pembrokeshire.—Haverfordwest, Narberth, Pembroke.

Radnor.—Presteigne, Rhaiadr.

And their lordships do further report as their opinion to your Majesty, that notice should be given in the *London Gazette*, pursuant to the provisions of the said act, that after the expiration of one calendar month from the date of the publication of such notice, your Majesty, with the advice of your privy council, will take into consideration the propriety of making the said two several orders for the purposes of the said act of the last session of Parliament.

Her Majesty is hereupon pleased, by and with the advice of her privy council, to order, and it is hereby ordered, that notice be, and the same is hereby given, that after the expiration of one calendar month from the date of the publication of this order and notice in the *London Gazette*, her Majesty, with the advice of her privy council, will take into consideration the propriety of making the said two several orders for the purposes of the said act.

WM. L. BATHURST.

ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

Privy Council. APPEALS.

APPEAL.

1. *Practice.*—*Final sentence.*—An interlocutory order, referring matters of account to the sworn Accountant of the Court of Civil Justice in Barbice, with instructions thereon, is not such a definitive sentence as by the rules of the civil law requires a specific appeal, but may be questioned on a general appeal from the final sentence of the court. *Cameron v. Fraser*, 4 Moore, 1.

2. *Practice.*—*Semble*, where a party, objecting to a paper annexed to letters of administration, has been by the court assigned to declare whether he propounds another instrument, it is irregular and inconclusive, instead of following up the assignation, to have the question decided upon petition. But such procedure estoppes the parties from further litigation.

A reply on the hearing of the appeal allowed, though not allowed by the practice of the court below on the original hearing of the act on petition. *Henfrey v. Henfrey*, 4 Moore, 29.

3. *Practice.*—Leave given to appeal, though the subject-matter of the suit was below 200*l.*, the sum required by the Order in Council of 13th May, 1823, and the appeal refused by the Royal Court. *Attorney-General of Jersey v. Capelain*, 4 Moore, 37.

4. *Leave granted.*—*Charter of Justice of Newfoundland.*—Upon a petition stating that a party against whom a decree had been pronounced by the Supreme Court of Newfoundland, was at the time resident in England, and had no representative within the island, or notice of proceedings against him, the Judicial Committee gave leave to appeal upon terms, notwithstanding that he had not asserted an appeal within 14 days from the final decree as required by the Charter of Justice of Newfoundland. *Henderson v. Henderson*, 4 Moore, 259.

5. *Leave granted.*—*Costs of divorce à vinculo.*—*Security for prosecution of, and costs.*—*Charter of justice of the Mauritius.*—The Supreme Court at the Mauritius refused to allow an appeal to the Queen in council from a definitive sentence in a suit for a divorce à vinculo, except upon terms of giving security in the aggregate sum of 1,200*l.* sterling, for performance of the order in council, to be made on appeal, and the costs incurred thereby. On petition the Judicial Committee allowed the appeal, fixing the security at 300*l.* *Hulm v. Hulm*, 4 Moore, 262.

6. *Costs.*—Appeal from the High Court of Admiralty not prosecuted, cause remitted with costs. *Brownlow v. Garson*, 4 Moore, 272.

7. *Less than 1,000*l.**—Application for leave to appeal from an order of the Supreme Court at Van Dieman's Land, refusing a fourth new trial of an action of trover, the subject-matter of which amounted to 970*l.*, refused; the

Charter of Justice limiting the right of appearance to 1,000*l.*, and the Judicial Committee being of opinion upon the merits, that it was a mere question for a jury who had already found four times against the petitioner. *Sherwin, in re*, 4 Moore, 311.

And see *Divorce*.

BOTTOMRY BOND.

Necessary supplies.—*Foreign law, how proved.*—A bottomry bond may be good in part, though void for the residue. When, therefore, a bottomry bond was given by the master at New York, as well for advances to obtain his discharge from arrest, at the instance of the consignees, on account of damage done on the voyage to part of the cargo; as for payment of the port dues and other disbursements necessary to enable the ship to prosecute the voyage, the Judicial Committee, reversing so much of the decision of the Admiralty Court as rejected the bond *in toto*, sustained the bond to the extent of the sums advanced for necessary supplies, and payment of the port duties. If liability is placed upon a difference between the law of England and a foreign state, the party relying upon the difference is bound by witnesses or authorities to prove such fact. *Smith v. Gould*, 4 Moore, 21.

BURIAL.

See *Lay Baptism*.

CHURCH DISCIPLINE.

By sect. 3 of the 3 & 4 Vict. c. 86, (the Church Discipline Act,) the bishop is empowered to issue a commission of inquiry respecting any charge or report against any clergyman within his diocese, provided always, that notice of the intention to issue such commission, under the hand of the bishop, containing an intimation of the nature of the offence, together with the names, addition, and evidence of the party on whose application or motion such commission shall be about to issue, shall be sent by the bishop to the party accused, fourteen days at least before such commission shall issue; and by sec. 13, it is provided, that it shall be lawful for the bishop, "if he shall think fit, either in the *first instance*, or after the commissioners shall have reported that there is sufficient *prima facie* ground for instituting proceedings, and before the filing of the articles, but not afterwards, to send the case by letters of request to the Court of Appeal of the province, to be then heard and determined according to the law and practice of such court."

Held, by the Judicial Committee affirming the judgment of the court below, that the service of notice of the intention to issue a commission by the bishop, but upon which no commission issued, will not preclude the bishop from sending the case to the Court of Appeal by letters of request, in the *first instance*. *Head v. Sanders*, 4 Moore, 186.

CHURCH FEES.

See *Roman Catholic*.

COLLISION.

Rules of the Trinity House.—In cases of collision the rule of the Trinity House, that “where steam-vessels on different courses must unavoidably cross so near, that by continuing their respective courses there would be a risk of coming in collision, each vessel shall put her helm to port, so as always to pass on the larboard side of each other,” is applicable only when vessels, by continuing their respective courses, are likely to come into collision, and when, by putting their helms to port, the collision may be avoided; but the rule is not applicable when either vessel, by unskilful management, is so near the shore that by porting her helm there would be danger of collision; in such case, the vessel on her right course is justified, in spite of the rule, in putting her helm to starboard. *Steam Navigation Company v. Tonkin*, 4 Moore, 314.

Cases cited in the judgment : *Butterfield v. Forrester*, 11 East, 60; *Bridge v. Grand Junction Railway Company*, 3 M. & W. 244; *Davies v. Mann*, 10 M. & W. 546.

See *Pilot Act*.

COLONIAL COURT.

Practice.—In ranking creditors under an execution sale, the Court of British Guiana, declared by definitive sentences, the petitioner’s constituents’ claims preferential. Appeals were interposed from these sentences. Pending the appeals, the petitioner filed a petition in B. Guiana, praying the court to proceed to judgment of *præ et concurrentie*, and to award the monies to be paid by him, *sub cautione de restituendo*: this the court refused. The petitioner then applied *ex parte* to her Majesty in council, to reverse the order of refusal, and for an order upon the judges in B. Guiana, directing them to entertain the petitioner’s application. *Held*, by the Judicial Committee, that an *ex parte* petition, under such circumstances, could not be entertained. *Butts, in re*, 4 Moore, 93.

CONTEMPT.

Newfoundland Colonial House of Assembly.—The House of Assembly of the Island of Newfoundland does not possess, as a legal incident, the power of arrest, with a view of adjudicating on a contempt committed out of the house; but only such powers as are reasonably necessary for the proper exercise of its functions and duties as a local legislature.

Semble, The House of Commons possesses this power only by virtue of ancient usage and prerogative; the *lex et consuetudo parliamenti*.

Semble, The crown, by its prerogative, can create a legislative assembly in a settled colony, subordinate to parliament, but with supreme power within the limits of the colony, for the government of its inhabitants; but

Quære, Whether it can bestow upon it an authority, viz., that of committing for contempt, not incidental to it by law.

The principles of *Beaumont v. Beaumont*, 1 Moore; P. C. C. 59, and *Burdett v. Abbott*, 14 East, 137, examined. *Kielley v. Carson*, 4 Moore, 63.

And see *Divorce*; *Judge of Inferior Court*.

COSTS.

See *Appeal*, 5, 6.

CROWN REVENUE.

The Royal Court of Jersey have no power to order charges for alterations made in the court house, directed at their instance, to be defrayed out of the crown revenues of the island. Judgment of the Court of Jersey, declaring the Attorney-General and Receivers of the island liable for such charges, reversed on appeal, with costs. *Attorney-General of Jersey v. Capelain*, 4 Moore, 37.

DIVORCE.

Contempt.—Appeal.—A party in contempt for not obeying a monition, whose contempt has been signified under 53 G. 3, c. 127, and a writ *de contumace copiendo*, extracted against him, is not precluded from appealing from the principal sentence, though pronounced *in pænam*. Protest against permission to appeal, under such circumstances, overruled. *Harrison v. Harrison*, 4 Moore, 96.

DUTCH ROMAN LAW.

Interdict.—Action for damages.—In an action brought in the Supreme Court of B. Guiana, the plaintiff obtained an interdict restraining the defendants, the managers of a plantation, from selling or consigning any portion of the proceeds of the plantation. This interdict remained in force until the cause came on for hearing, (ten months afterwards,) when the court discharged the interdict as having been obtained *per sub et ob reptionem*, and condemned the plaintiff “to make good to the defendants all losses, costs, and damages by them already had and suffered, or yet to be had and suffered in consequence.”

An appeal was entered against this decree, but not prosecuted. The defendants to the previous action then brought an action in the same court to assess the losses, costs, and damages incurred by reason of the interdict. Evidence was given of certain damages sustained in consequence of the interdict, which was not contradicted. The court rejected the claim *in toto*.

Held, by the Judicial Committee, on appeal: 1st, That the decree discharging the interdict must be presumed to have been conformable to the law of Holland prevailing in B. Guiana. 2ndly, That that decree must be taken as a simultaneous decree discharging the interdict and pronouncing for damages. And, 3rdly, That the court below was wrong in rejecting the claim *in toto*, there being evidence of damages sustained by the verdict. And remitted the cause to the court below to assess the damages incurred. *M’Turk v. Bent*, 4 Moore, 213.

ESCHEAT.

Letters of preference.—In the year 1827, letters of preference of escheated property in the island of Jamaica were granted under the Great Seal of the island; by the terms of which

it was provided, that the grantee should, within twelve months from the date thereof, or for such further time as the governor of the island should limit and appoint, take the necessary steps to prosecute the rights of the crown to the escheated property, otherwise the preference thereby given was to be void. The grantee entered into possession and received the rents and profits, but took no further steps to prosecute the escheat to final judgment for the crown. Upon an information filed in 1835, by the Attorney-General of Jamaica, praying that the grantee might be declared accountable to the crown, in respect of the rents and profits received by him since he had been in possession. *Held*, by the Court of Chancery of Jamaica, and affirmed on appeal to the Judicial Committee, that the grantee was bound to prosecute the escheat to final judgment for the crown within a proper time; and that he was liable to account to the crown for the rents and profits received by him, from the time of entering into possession. *Mason v. Attorney-General of Jamaica*, 4 Moore, 228.

EVIDENCE.

1. Evidence not adduced in the court below, or forming part of the transcript admitted on motion, to be used at the hearing of the appeal, subject to all just exceptions. *Hughes v. Porral*, 4 Moore, 42.

2. Sentence of nullity of marriage, *causâ impotentia*, pronounced on confession of non-consummation, and refusal to undergo inspection. A medical certificate of the competency of the party in a suit *impotentia causâ*, not in evidence in the court below, refused to be admitted on appeal. *Harrison v. Harrison*, 4 Moore, 96.

3. The admission of a witness that he is a member of a religious sect who hold a certain principle as a body, which, if acknowledged individually, would subject him to excommunication *ipso facto*, by the 12th Canon of 1603. *Held*, insufficient to disable him from giving evidence in the suit. And

Quære, if excommunication *ipso facto*, (if not absolutely abolished by stat. 53 G. 3, c. 127,) disables a party from being a witness until absolved. *Escott v. Mastin*, 4 Moore, 104.

Case cited in the judgment: *Grant v. Grant*, 1 Lee's Ca. 593.

4. Evidence of the owners' claim not tendered in the court below, received by the Judicial Committee on the hearing of the appeal. *Guimaraeus v. Preston*, 4 Moore, 107.

5. The affidavit of a person present at the seizure, though not the seizer himself, is sufficient to ground a monition, citing the master in particular, and all others in general to appear, &c. *Guimaraeus v. Preston*, 4 Moore, 167.

6. *Witness, interest of.*—*Re-examination after publication.*—No general rule exists, that a witness who is interested at the time of his examination cannot be re-examine after a release of his interest, but in granting leave to re-examine a witness, the court will regulate

itself by the peculiar circumstances of each case, and the nature of the interest of the witness.

A subscribing witness, produced by the executor, was examined upon an allegation to prove the will. Upon his answer to the interrogatories, he admitted that he was the solicitor to the executor (the promovent), and that he had employed the proctor in the suit, and that if the executor failed in paying the costs, he would himself be legally liable to the proctor. Publication passed, and the cause was assigned for hearing. Upon motion, the Prerogative Court rescinded the conclusion of the cause, and granted the promovent leave to re-examine the witness after a release of his liability. Affirmed on appeal by the Judicial Committee of the Privy Council. *Clark v. Carter*, 4 Moore, 207.

Case cited in the judgment: *Vaughan v. Worral*, 2 Swan. 395.

7. *Record.*—The letters of preference not forming part of the transcript, the hearing of the appeal was postponed, and an order made for a certified copy to be transmitted by the clerk of the patents in Jamaica, to the Privy Council Office. *Mason v. Attorney-General of Jamaica*, 4 Moore, 228.

FOREIGN LAW.

See *Bottomry Bond*.

INHIBITION.

1. The 5th G. 4, c. 113, s. 29, enacts, that no appeals shall be prosecuted from any sentence of any Court of Admiralty or Vice-Admiralty, (with the exception of the Cape of Good Hope and eastward thereof,) unless an inhibition be applied for and decreed within twelve months from the time of the decree or sentence being pronounced. By the 3 & 4 W. 4, c. 41, the appellate jurisdiction given by the previous statute to the High Court of Admiralty was vested in the Judicial Committee of the Privy Council, but which court, from its constitution, had no jurisdiction over the appeal until the petition of appeal was referred to them by the crown. The appellant presented, on the 16th of July, 1841, a petition of appeal from a decree of condemnation pronounced on the 12th of August, 1840, by the Vice-Admiralty Court of Sierra Leone, against a vessel engaged in the slave trade, contrary to the provisions of the 6 G. 4, c. 113. The appeal was not referred by her Majesty to the Judicial Committee until the 11th of August, 1841, one day before the year expired, and notice of such reference was not given by the clerk in council until the 13th of the same month, one day after the twelve months had expired, when the appellant applied for and obtained an inhibition. On protest against the appeal, *Held*

1st, That the 5 G. 4, c. 113, was incorporated in the 3 & 4 W. 4, c. 41; 2ndly, That the appellant having failed to procure, in compliance with the 5 G. 4, c. 113, s. 29, an inhibition to issue within 12 months from the sentence, was barred his appeal; the provisions of that section being imperative, and having no discretion in the court to relax the operation of the act. *Logan v. Burslem*, 4 Moore, 284.

2. Protest against an appeal sustained; the appellants (Brazilian subjects), the owners of the cargo on board a vessel seized and condemned under the 5 G. 4, c. 113, having failed to procure an inhibition to issue within twelve months from the date of the condemnation. *Lopez v. Burslem*, 4 Moore, 300.

3. *Foreigner*.—The 5 Geo. 4, c. 113, (the Slave Abolition Act,) s. 29, enacts, that no appeals shall be prosecuted from any sentence of any court of admiralty or vice-admiralty, (except at any vice-admiralty court at the Cape of Good Hope, or to the eastward thereof,) unless an inhibition be applied for and decreed within twelve months from the time of the decree or sentence being pronounced: *Held*, to apply to foreigners as well as British subjects. *Lopez v. Burslem*, 4 Moore, 300.

See *Judge of Inferior Court*.

JERSEY, ROYAL COURT.

Action for defamation.—Damages.—By the law of Jersey, it is necessary, in order to constitute a valid judgment, that a majority of the jurors constituting the court concur in the judgment. If they are equally divided, the bailiff has the casting vote. A judgment of the Royal Court, in an action of defamation, consisting of the bailiff and six jurors, of whom three were of opinion that the action ought to be dismissed, two for the plaintiff, and one "that the court could not pass judicial sentence upon the defendant," and the bailiff did not vote. *Held*, by the Judicial Committee to be bad, and the judgment of the court below reversed. And, upon the merits, judgment ordered to be entered for the plaintiff, with damages awarded by their lordships. *Le Breton v. Ennis*, 4 Moore, 323.

JUDGE OF INFERIOR COURT.

Attachment for contempt of inhibition.—This court will not visit a judge of an inferior court with the penal consequences of an attachment for contumacy and contempt, for disregarding an inhibition, unless such disobedience is wilful, and proceeded from improper motives.

An inhibition to the judge of the Vice-Admiralty Court at Gibraltar, inhibiting him from doing anything prejudicial to the parties appellant pending an appeal, is not to be disregarded at his discretion, although he may consider that he is acting for the benefit of all parties.

Decree for a sale of a vessel condemned, after appeal asserted and inhibition served personally on the judge, *Held*, not such a contempt, under the circumstances of the case, as to entitle the owners to an attachment against the judge for costs and damages incurred thereby. *Barton v. Field*, 4 Moore, 273.

JURISDICTION.

1. The Privy Council has no jurisdiction to direct the release of a party imprisoned for a contempt of the court below, pending an appeal respecting the merits of the suit. *Hughes v. Porral*, 4 Moore, 42.

2. *Practice*.—The British parliament have no

power to legislate for foreigners out of the dominions and beyond the jurisdiction of the crown; yet it can by statute fix the time within which application must be made for redress to the tribunals of the empire. This being matter of procedure, becomes the law of the *forum*, by which all mankind are bound. *Lopez v. Burslem*, 4 Moore, 300.

LAY BAPTISM.

Burial.—A child baptized with water in the name of the Trinity, by a layman, (a Wesleyan Methodist,) not authorised to administer the rite of baptism. *Held*, not to be "unbaptized" within the meaning of the rubric for the burial of the dead in the "Common Prayer Book, as incorporated under the Uniformity Act, 13 & 14 Car. 2, c. 4.

A clergyman of the Church of England having refused to perform the office of interment, after due notice of the death of a parishioner so baptized, suspended from the ministry for three months, under the 68th Canon of 1603.

Construction of the rubrics of the Common Prayer Books of the years 1603 and 1661. *Held*, to be cumulative, and not substitutory, of the rubric in force anterior to 1603, and not to affect the validity of lay baptism. *Escott v. Mastin*, 4 Moore, 104.

Cases cited: *Dalrymple v. Dalrymple*, 2 Hag. Con. Rep. 64; *Kemp v. Wickes*, 3 Phill. 264.

NEWFOUNDLAND APPEALS.

See *Appeal*, 4.

OUTER DOOR.

See *Sheriff's Officer*.

PATENT.

Extension of term refused.—Extension of the term of letters patent refused, although the profits derived from the patent article was less than the expenditure incurred upon the patent, the utility of the invention being small.

The fact of an invention, when known, not getting into general use, is a presumption against its utility. *Re Simister's Patent*, 4 Moore, 164.

PILOT ACT.

Collision.—Carelessness of master and crew, having a licensed pilot.—The 6 G. 4, c. 125, s. 55, does not exempt the owners and masters of vessels having a licensed pilot on board, from liability in respect of damages done by their vessel, unless the damage was solely caused by the neglect, default, incompetency, or incapacity of the pilot.

Where, therefore, it was proved that the accident happened through the carelessness of the master and crew, as well as the pilot, in not keeping a good look-out, the Judicial Committee of the Privy Council held, affirming the sentence of the Admiralty Court, that the civil liability of the owner in respect of damages continued. *Stuart v. Isomonger*, 4 Moore, 11.

Cases cited in the judgment: *Bennet v. Maits*, 7 Taunt. 258; *The Girolamo*. 3 Hagg. Adm.

Rep. 169; *Pipon v. Cope*, 1 Camp. 434; *Nep-
tune the Second*, 1 Dodson, 467; *Gale v.
Laurie*, 5 B. & C. 156.

PRACTICE.

See *Appeal: Colonial Court: Jurisdiction*, 2.

PRINCIPAL AND SURETY.

Collateral security.—*A.* drew five bills in favor of *B.* on *Fergusson & Co.*, who accepted the same, and got them discounted by the Bank of Bengal, and on their becoming due, procured their renewal. *Fergusson & Co.* subsequently drew three bills on the Bank of Bengal; and, for securing as well the repayment of the principal sum due on these bills and interest, as of all and every sum or sums which the bank had already advanced or should advance on account of the drawers, deposited as collateral securities various quantities of Chili copper of a larger amount in value than the advances then made. By a condition in these bills, the bank was authorised, in default of payment within the time stipulated, to dispose of the copper by public or private sale, and to reimburse themselves the principal and interest due thereon. Shortly afterwards, *Fergusson & Co.* failed, and assignees of their estate were appointed under the Indian Insolvent Act. On presentation to *A.* of the first of the renewed bills, he served notice on the bank not to part with the securities so deposited with them, alleging that the bills drawn and renewed by him were accommodation bills, for which he had not received any consideration, and were renewed on the faith of the securities being applicable for their discharge. The assignees of *Fergusson & Co.* redeemed the bills drawn by *Fergusson & Co.* All the bills drawn by *A.* were dishonoured, and the Bank of Bengal brought an action against *A.* for their amount. On a bill filed by *A.*, the bank were restrained by injunction from proceeding with the action at law. *Held*, on appeal, by the Judicial Committee, discharging the injunction and reversing the decree of the Supreme Court, that, under the circumstances, the redemption of the securities was a sale within the meaning of the condition contained in the deposit bills, and that such sale was not a release to *A.* as surety for the previous bills, the condition not being that the copper or the proceeds thereof should be applied preferentially or *pari passu* with the other debts, but simply in reimbursement to the bank, of the principal and interest due upon the bills. *Bank of Bengal v. Radakissen Mitter*, 4 Moore, 140.

ROMAN CATHOLIC CHURCH FEES.

The Vicar-General of the Roman Catholic Church at Gibraltar is liable to account for the fees received by him for administering the offices of the church, such fees being by custom regulated, and subject to the control of the Assembly of Elders, or Junta, of which he is the head, and disposed of by them for the general purposes of the church. Decree granting injunction against the receipt of such fees by the Vicar-General, and directing him to replace in

certain parts of the church the tariff or table thereof, varied by dissolving the injunction, and decreeing him only to account as receiver for all sums paid to him on account of the same. *Hughes v. Ferral*, 4 Moore, 41.

SHERIFF'S OFFICER.

Justification for breaking open outer door.—*Indictment for false imprisonment.*—A sheriff's officer, in execution of a bailable writ, peaceably obtained entrance by the outer door, but before he could make an actual arrest, was forcibly expelled from the house, and the outer door fastened against him. The officer obtained assistance, broke open the outer door, and made the arrest. *Held*, that the officer was justified in so doing.

Held, also, that demand of re-entry, under such circumstances, was not requisite to justify his breaking open the outer door.*

Quere, if indictment for an assault and false imprisonment will, under such circumstances, lie against the sheriff's officer.^b *Aga Kurboolie Mahomed v. The Queen*, 4 Moore, 239.

Cases cited in the judgment: ^a*White v. Wiltshire*, Palm. 52; ² *Rolle Rep.* 137; *Cro. Jac.* 555; *Pugh v. Griffith*, 7 A. & E. 827; ^b*Cameron v. Lightfoot*, W. Bla. Rep. 1190; *Tarleton v. Fisher*, Doug. 671; *Stokes v. White*, 1 Cr. Mee. & Ros. 223; *Newton v. Constable*, 2 Q. B. 157; *Hodson v. Towning*, B. R. H. T. 1837; 1 W. W. & D. 53.

SLAVE TRADE.

Proceedings for breach of 2 & 3 W. 4, c. 51.—Seizure and condemnation of a Portuguese vessel, under 2 & 3 Vict. c. 73, affirmed on appeal by the Judicial Committee.

Proceedings taken against a vessel seized under the 2 & 3 Vict. c. 73, are to be according to the rules and regulations established under the 2 & 3 W. 4, c. 51, and not according to the forms of civil law. *Guimaraeus v. Preston*, 4 Moore, 167.

TRUST.

Executory.—*Ultimate Limitation.*—*R. S.*, by deed, conveyed to trustees real estates in the Isle of Man, upon trust, in the first instance, to permit him, the settlor, to receive the rents and profits thereof during his life, and upon his death, in trust, to pay out of the rents accruing from such land, an annuity of 40*l.* to *H. A.* during his life, and to pay the residue of such rents to *J. A.*, her heirs or assigns; and upon *H. A.*'s death, in trust to convey the said lands to *J. A.* and her heirs, if then living, or if she should be then dead, unto the heir-at-law of the said *J. A.*, and the heirs and assigns of such heir-at-law. *R. S.* (the settlor) died intestate and unmarried. *J. A.* died, leaving *H. A.* his heir-at-law; then *H. A.* died, leaving *J. E. T.* his heir-at-law, and who then became heir-at-law of *J. A.* Upon a bill filed by *J. E. T.*, against the surviving trustee, under the deed, for the conveyance of the estate: *Held*, by the Judicial Committee, affirming the decree of the Court of Chancery of the Isle of Man, that *J. E. T.* took by purchase under the ultimate limitation, as the person answering the

description of heir-at-law of *J. A.*, at the death of *H. A.*; and a conveyance decreed. *Cain v. Teare*, 4 Moore, 249.

VENDOR AND PURCHASER.

Preferential right.—Damages on bills of exchange.—*A.* sold to *B.* a plantation in Berbice. The purchase money was secured by bills of exchange drawn by *B.* on houses in England; and as a further security, *B.*, on receiving a transport of the estate, hypothecated the same to *A.* for the amount of the purchase-money then due on the bills, with interest and damages accruing thereon, declaring such mortgage to be a first and preferent charge. Some of the bills were protested and returned to the colony, and the plantation was, in consequence, sold under an execution sale at the suit of *A.* The Supreme Court of British Guiana, in adjudicating the claim of *A.* and the other creditors of *B.*, held *A.* to have a preferential claim for the principal and interest due upon the protested bills, but refused to allow such right for the damages consequent thereon. The decree, so far as it refused the preferential right for damages, held, erroneous, and reversed. *Cameron v. Fraser*, 4 Moore, 1.

WILLS.

1. **Two substantive wills.—Revocation.**—*Probate.*—A testator left two substantive wills, each disposing of his entire property. By the first, dated in 1838, he appointed executors, to one of whom he gave the residue of his estate. By the second will, dated in 1839, which contained no revocation of the prior one, he gave the whole of his property to his wife, with the exception of 5*l.*, but appointed no executors. Held, affirming the decree of the court below, that the second will operated as a revocation of the first will, and was alone entitled to probate. *Henfrey v. Henfrey*, 4 Moore, 29.

Cases cited in the judgment: *Ingram v. Strong*, 2 Phill. 312, 313; *Methuen v. Methuen*, 2 Phill. 426; *Hughes v. Turner*, 3 Hagg. Ecc. Rep. 30; *Masterman v. Maberley*, 2 Hagg. Ecc. Rep. 236; *Beard v. Beard*, 3 Atk. 72.

2. **Attestation.—Acknowledgment of signature.**—The mere circumstance of the deceased having called in two witnesses "to sign a paper for him," (which they did in his presence,) but without any explanation of the nature of the instrument being made to them, or the witnesses being able to see if any signature or writing was upon it when they attested it: Held, by the Judicial Committee of the Privy Council, affirming the judgment of the Prerogative Court, not to amount to an acknowledgment of the signature of the deceased, so as to satisfy the provisions of 1 Vict. c. 26, s. 9, and probate refused to such paper. *Ilott v. Genge*, 4 Moore, 265.

3. **Executed by a blind person.**—Will executed by a blind testator established. The will being in conformity with the instructions given by the testator to her solicitor, though not proved to have been read over to the testator previous to execution. *Edwards v. Fincham*, 4 Moore, 198.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Masterman v. Lewin. Jan. 11th, 1847.

INTERPLEADER SUIT.—DECREE BEFORE ANSWER.—COLLUSION.

The court will not order a bill of interpleader to be dismissed before all the defendants have put in their answers; nor will it infer collusion between the plaintiff and one of the defendants in the absence of an affidavit to that effect.

THE defendant having brought an action of trover against the plaintiff for the delivery of certain deeds, the latter filed his bill of interpleader against the former and two others, stating, that at the instance of the heir-at-law, (one of the defendants,) and as his solicitor, he had retained the deeds in question, and praying the usual injunction. Previously to the putting in an answer by the third defendant, Vice-Chancellor Knight Bruce made a decretal order of reference to the Master for an inquiry into the heir-at-law's title; and upon the report that he had none, and that the plaintiff had no right to retain the deeds, his Honour ordered the dismissal of his bill, with costs.

Mr. Cooper submitted that the court had no jurisdiction to make either the decretal or final order until all the answers had been put in, as it could not in such imperfect state of the proceedings, be acquainted with all the facts of the case, and of the plaintiff's justification in filing a bill. *Bowyer v. Pritchard*, 11 Price, 103; *Thames and Medway Canal Company v. Nash*, 5 Sim. 280; *Ilyde v. Warren*, 19 Ves. 322; *Townley v. Deare*, 3 Beav. 213. (confirmed by his lordship on appeal, p. 217); *Dungey v. Angove*, 2 Ves. junr., 304; *Statham v. Hall*, Turn. & Russ. 30; *Jew v. Wood*, 3 Beav. 479; Mitf. Pl., p. 115, (3rd ed.); *Jenkins v. Bryan*, 6 Sim. 605; *Lynn v. Lock*, 3 Dru. & War. 24.

Mr. Russell and Mr. Montagu in support of the order stated, that the plaintiff at law had moved to dismiss the bill for want of prosecution, the time having then long since elapsed, and the plaintiff not having taken any steps to procure the calling in of the remaining answer; but that, upon the suggestion of the court below, the dissolution of the injunction was canvassed on the merits, his honour being of opinion that such mode would best effectuate substantial justice between the parties.

The Lord Chancellor. This order is irregular, and ought never to have been made. The claims being adverse, it was a proper case for an interpleader suit, and there is no authority for the court to decide such bill on the merits, in the absence of one of the defendants, and before his answer. With respect to the delay of the latter, the court could not infer collusion between him and the plaintiff, in the absence of

an affidavit to that effect. The regular practice would have been to have moved that the plaintiff should get in that answer, and if it could not be obtained, then that the bill might be taken *pro confesso* as against such defendant. The only decree which could be given in the present instance by the court (if pressed) must be, that the order should be discharged, and the parties replaced in their original state.

Vice-Chancellor Knight Bruce.

Wroughton v. Barclay. Hilary Term, 1847.

SOLICITOR'S LIEN.—PRODUCTION OF DOCUMENTS.—PAYMENT OF COSTS.

Two solicitors in partnership, one of whom was a defendant, claimed a lien upon documents for costs, such documents being admitted by the defendants in the suit to be in their custody, power, or control: Held, that the defendants were not compellable to pay the costs, in order to get rid of the lien.

MR. J. A. COOKE moved, on behalf of the plaintiff, for the production of documents admitted by the defendants (a public company), in their answer, to be in their power, being in fact in possession of their solicitors, Messrs. Bush and Mullens, the former gentleman being a defendant. The solicitors claimed a lien upon them for their costs. It was insisted, that the defendants were bound to pay the costs, in order to get rid of the lien, and make the documents available to the plaintiff.

The motion was opposed by Mr. Prior, for the defendants.

Sir J. L. Knight Bruce, V. C. I do not consider myself at liberty to order the defendants to pay these costs for the purpose of the present motion. Motion refused.

Denning v. Henderson. Hilary Term, 1847.

VENDOR AND PURCHASER.—PAYMENT INTO COURT.—ACCEPTING TITLE.

A purchaser applying to pay money into court must undertake to accept title, although the payment is consented to by all the parties.

THIS was a motion that the purchaser might be at liberty to pay his purchase money into court. It was made on the purchaser's behalf, and with the consent of all the parties in the cause; but it was asked that this might be done without the condition of accepting the title.

Mr. Bates appeared in support of the motion.

Sir J. L. Knight Bruce, V. C. It is the unanimous opinion of the registrars that, even with consent, it is not allowable to pay money into court, unless the title is accepted; I must therefore refuse the motion.

Queen's Bench.

(Before the Four Judges.)

The Queen v. The Inhabitants of St. Anne's, Westminster. Hilary Term, 1847.

SESSIONS.—APPEAL.—ENTRY NOT ON THE MERITS.

An entry made by a court of quarter sessions on the trial of a parish appeal, that "the

order be quashed, not upon the merits without prejudice to the making of any other order for the removal of the said pauper," does not operate as an estoppel so as to prevent another removal with respect to the same settlement and between the same parishes; and, at the trial of such second appeal, it is not competent for the appellants to give evidence to show that, notwithstanding the entry of the former sessions, the order was quashed on facts which in law affected the merits of the settlement.

ON appeal against an order of a police magistrate for the removal of a pauper from the parish of St. Pancras to the parish of St. Anne, Westminster, the sessions made the following order:

It is, after hearing counsel on both sides, ordered that the said order of the said magistrate so appealed against be quashed, not upon the merits without prejudice to the making of any other order for the removal of the said G. W. from either of the said parishes to the other of them, or to any other parish or place to which he may appear to have become chargeable, and the same is hereby quashed accordingly.

By the Court.

The respondents afterwards obtained a fresh order for the removal of the same pauper to the appellant parish, who alleged in their grounds of appeal, that the former order was conclusive between the parishes. At the trial the appellants contended that the former order operated as an estoppel, which was not altered by the special clause inserted in the former order of sessions.

The appellant then tendered evidence to show the ground on which the former decision of the sessions was made, which, they contended, notwithstanding the entry of the sessions, was a decision which affected the merits of the settlement. The sessions held the former order not to be an estoppel, and refused to receive evidence to show that the former decision was on the merits, subject to a case.

Mr. Godson and Mr. Howarth in support of the order of sessions were not heard.

Mr. Pashley contra. If the former order is not conclusive between the parishes, then the appellants are able to show on what grounds the former order was quashed. *Rees v. Wick St. Lawrence.*^a In *ex parte Ackworth*,^b Mr. Justice Patteson entertained a doubt whether evidence could be given to explain the grounds on which the entry was recorded, not on the merits. That case is supported by *Regina v. St. Mary, Lambeth*.^c It is difficult to say what the sessions consider merits. Where the examination omits some fact material to show the settlement, it is the same thing as if evidence produced on the hearing was insufficient to prove the fact, and the respondents failed on that account.

Lord Denman, C. J. This is an attempt to set up an estoppel. A former order of sessions

^a 5 Barn. & Adol. 526. ^b 3 Q. B. R. 397.

^c 2 New Sessions Cases, 36.

was quashed, and an entry made, quashed not on the merits without prejudice to the making of any other order. Then, are the respondents to be excluded from the right of trying this appeal on the merits on any subsequent occasion. The entry "not on the merits" was made in conformity with a suggestion thrown out by the court in *Rex v. Wick St. Lawrence*.^d The sessions perfectly well understood what was meant by the expression, and I am of opinion that the question of settlement has not been decided. Something has occurred analogous to a case of nonsuit, and not like a verdict against the parties. The sessions may quash the order without inquiring into the settlement for various reasons. If they did so because the evidence adduced was not sufficient to support the settlement, they would do wrong in making such an entry, but if they did so on any ground not involving the point of settlement, then they would do right in saying that the order was quashed not upon the merits. In the case of *ex parte Ackworth*^e there was some criticism on the words "not upon the merits," but the result of that case is, that my brother Patten, acting on the principle which we are now supporting, refused to interfere to prevent the words having their effect. It was competent for the sessions to make this entry, and I think they came to a right conclusion.

Mr. Justice Patten concurred.

Mr. Justice Coleridge. I am of the same opinion. This is an attempt to make a decision final which was never intended by the parties should be final. The cases cited as to how far inquiry can be made into the grounds of a former decision of the sessions do not apply. The question is, what is the meaning of the words used "not upon the merits." The expression may mean something which the sessions never intended, but we are not to presume that they used it in a wrong sense. It is evident from the remainder of the sentence that the sessions intended to say that the order was quashed on matter of form, and that the question of settlement was still left undecided.

Mr. Justice Wightman concurred.

Order of sessions confirmed.

Queen's Bench Practice Court.

Doe dem. Pugh v. Price. Hilary Term, Jan. 20, 1847.

PAUPER PLAINTIFF, WHEN LIABLE FOR COSTS.

The court will not compel a pauper to pay costs by reason of his giving a notice of trial which he afterwards duly countermanded. A notice of trial duly countermanded is the same as if none had been given.

Tyrwhit moved for a rule calling on the plaintiff to show cause why he should not pay the costs of this action.

This was an action of ejectment which was commenced in 1840, the lessor of the plaintiff suing in *forma pauperis*; and in the Trinity Term of that year the plaintiff gave notice of trial. This, however, was duly countermanded, and no further part was taken by him in the action. In the last term judgment as in case of a nonsuit was obtained against him. Under these circumstances, it was contended that this case came within the rule of court, that "where a pauper omits to proceed to trial pursuant to a notice or undertaking, he may be called upon by a rule to show cause why he should not pay costs, though he has not been dispaupered." *Pratt v. Delorue*, 10 M. & W. 509; *Gore v. Morphew*, 9 Dowl. 137.

Erle, J. I do not think you have brought yourself within the rule upon which the liability of the plaintiff to pay costs arises. Notice of trial duly countermanded is the same as if no notice had been given at all.

Rule refused.

Common Pleas.

Ruby v. Nicholls. Hilary Term, Jan. 21, 1847.

WRIT OF SUMMONS.—DEFECTIVE INDORSEMENT.

Where a writ of summons is sued out by the plaintiff in person, the indorsement of his place of residence should state either the parish, city, or town in which such residence is situate; and an omission in that respect amounts to an irregularity.

Scotland moved in this case for a rule to show cause why the copy of the writ of summons and the service thereof should not be set aside for irregularity, with costs. The writ had been sued out by the plaintiff in person, and the indorsement of the plaintiff's residence on the back of the writ was in the following form:—"This writ was issued in person by J. Ruby, of No. 9, Lansdowne Terrace, Chalk Farm, Middlesex." The objection was, that the indorsement was irregular in not mentioning either the parish, city, or town of the plaintiff's residence, as required by the statute 2 W. 4, c. 39, s. 12, where the writ is sued out by the plaintiff in person. Arch. Pr. by Chitty, last edition, 150, was referred to.

Rule nisi granted.

Gale v. Chubb. Hilary Term, Jan. 25, 1847.

REGISTRATION APPEAL.—EFFECT OF JUDGMENT FOR COSTS.

After the court has granted costs on the final determination of a registration appeal, it will not entertain an application to rescind the order with respect to costs.

Boothby applied in this appeal case to rescind the order for costs made by the court on affirming the decision of the revising barrister, on the 19th of January. The question involved, he submitted, was one of some difficulty, and therefore, although the court had not thought it necessary to hear the counsel for the

^d 5 Barn. & Adol. 526. ^e 3 Q. B. R. 397.

respondent, it was not a case in which costs ought, in their discretion, to have been granted. The rule in such cases was that laid down by *Tindal, C. J.*, in a return made by him to the House of Commons in the year 1844, of the decisions of the court in the several registration appeals. It was there said, that costs were regulated on the principle, that where the subject matter of the appeal presented a fair and reasonable ground for doubt as to the construction of the statute, it was not the intention of the legislature that costs should be allowed.

By the court. What you are now asking is to vary the judgment of the court after the appeal has been determined. You might as well go to the House of Lords, and say to their lordships, after they had given judgment in the case with costs, that they had no right to do so. There is no ground whatever for the application.

Application refused.

Exchequer.

Burton v. Crawford. Hilary Term, Jan. 31, 1847.

APPEARANCE.—IRREGULARITY.—COSTS.

The court will not refuse the costs of a motion to set aside an appearance and notice of declaration for irregularity, on the ground that the defendant ought to have applied in the first instance to a judge at chambers.

THIS was a rule calling on the plaintiff to show cause, why an appearance entered by him for the defendant, and notice of declaration, should not be set aside for irregularity with costs, on the ground that the defendant had previously entered an appearance.

Ball showed cause, and submitted, that the court would not make the rule absolute with costs, inasmuch as the application ought to have been made to a judge at chambers. He cited *White v. Felton*, 16 Law Journal, C. P., in which the court refused the costs of an application to set aside a declaration, because it did not appear whether it was delivered in person or by attorney.

Lush, in support of the rule, argued, that as there was a clear irregularity, the defendant was not bound to apply to a judge at chambers, more especially as counsel could not be heard there in term.

Rolfe, B., (sitting alone.) This is an application to set aside proceedings for irregularity, and it is quite new to me that a party cannot in such case come to the court. The rule must be absolute with costs.

Rule absolute.

Court of Review.

Ex parte Dering re Cramp. Jan. 13th, 1847.

TRADING.—COWKEEPER.

A farmer who rented 104 acres of arable land, which he principally used for the cultivation of carraway seeds, and who kept four cows which were not used for the purposes

of his farm, but sold the whole of the milk, was held not to be a cowkeeper within the meaning of the Bankrupt Laws.

THE petition in this case was presented by *Mary Dering* and *William Brooke*, praying that a fiat issued against *John Cramp*, at his own instance, as a cowkeeper, dealer, and chapman, on the ground that the bankrupt was not a trader within the meaning of the Bankrupt Laws, and also on the ground that the fiat was issued fraudulently at a time when negotiations were pending for arranging the petitioner's debt by instalments, with security, the petitioner having an execution against the bankrupt for the debt. The fiat was dated 19th of September, 1846, and a creditors' assignee was chosen on the 9th of October following, and on the 12th of December the bankrupt obtained his certificate. On the hearing by the commissioner for the grant of the certificate, the application was opposed, and it was desired to be postponed, on the ground that this petition was about to be presented, but the commissioner declined such postponement. This petition was presented on the 14th of December. On the question, whether the bankrupt was a trader within the meaning of the Bankrupt Laws, the facts were as follow:—Previous to 1836, *Cramp* occupied and farmed the Great *Garlinge* farm, in the Isle of Thanet, consisting of 94 acres, and *Garlinge* farm, consisting of 104 acres; boarded his farm servants; and kept two cows only to supply them and his family, but did not sell or dispose of any milk. From 1836 to 1843, *Cramp* did not occupy Great *Garlinge* farm, nor board any of his farm servants, nor supply them with milk. From 1837 to the date of the fiat he kept up a stock of four cows, which, by his affidavit he stated, that he kept for the sole purpose of selling the milk, none of the same being used for his farm servants. The accounts as to the sale of the milk were kept distinct from his farming accounts. The greater part of the land occupied by the bankrupt was used by him for the purpose of growing carraway seeds; and he did not keep cattle on his farm for consuming the straw, clover, or green crop growing or made on his farms. By affidavits on the part of the petitioners, it appeared, that in the neighbourhood of the bankrupt's farm he was never considered to be a cowkeeper; and it was not known that he carried on any business but that of a farmer.

Swanston and *Collins* for the petition.

Bacon and *Goren* for the assignees.

And *Russell* and *Cooke* for the bankrupt.

The Chief Judge. This man was a farmer, and kept cows. I am clearly of opinion he was not a cowkeeper. I think the petition was presented late, but, I am apprehensive, that according to the course of practice and authority, it must be considered as presented in time. As to the trading, it is quite clear. I must annul the fiat, with costs generally, that is, against the bankrupt: no costs against the assignees, of course.

HOUSE OF LORDS CAUSE LIST.

Session 1847.

Heard, 1833, The King v. Trafford, writ err., K. B.—England.
Blake v. Boyle, Chy.—Ireland.
Attwood v. Small (abated), Exch.—England.
Johnston v. Thomas (abated),—Scotland.
Goold v. Richards (abated), Chy.—Ireland.
1836, Fully heard, Miller v. Knox, Exch.—Ireland.
1837, Small v. Attwood, Exch.—England.
1837, 1838, Furnell v. M'Gauran (abated), Chy.—Ireland.
Aitken v. Finlay and another (abated),—Scotland.
E. of Belfast v. M. of Donegall (abated), Chy.—Ireland.
Crawford v. Edward.—Scotland.
Andrews v. Walton (time given to enrol), Chy.—England.
Galwey v. Barron (abated), Exch.—Ireland.
1843, In part heard, Campbell or M'Laren v. Fisher.—Scotland.
1843, In part heard, E. of Stirling v. Officers of State for Scotland.—Scotland.
Sir H. Bridges v. Fordyce (abated),—Scotland.
1843, Beckham v. Drake (for the judges), writ err., Exch. and Exch. Chamber.—England.
Fully heard, Allen (pauper) v. M'Pherson, Chy.—England.
Judges, Sheehy v. Lord Muskerry, (fully heard), Chy.—Ireland.
Judges, Wilbraham v. Scarisbrick, exparte.—Duchy of Lancaster.
Fully heard, Mayor, &c., of Newcastle-upon-Tyne, v. The Attorney-General, Rolls.—England.
Judges, Harrison v. Stickney, writ err., Q. B.—England.
Brodley v. Stickney, writ err., Q. B.—England.
Fully heard, Trevor v. Trevor (to be re-argued), Chan.—England.
1844, Fully heard, Mayor, &c., of Gloucester v. Osborn (exparte as to Attorney-General), Chy.—England.
Fully heard, Pinkus v. Ratcliff Gas Light and Coke Company, exparte, Chy.—England.
Judges, Lord Camoys v. Blundell, exparte, Chy.—England.
Fully heard, Grant v. Shepherd.—Scotland.
1845, Leith v. Young (cause remitted),—Scotland.
Saward v. M'Donnell, exparte, Chy.—England.
Wordsworth v. Wood, Chy.—England.
Fully heard, Bowen v. Evans, exparte, Chy.—Ireland.
Morton v. Earl of Eglinton (remitted),—Scotland.
Squire v. Whitton, exparte, (abated), Chy.—England.
M'Kenna v. Papo, writ err. Exch., Chr.—Ireland.
Cole v. Sewell, exparte, Chy.—Ireland.
In part heard, Wilson v. Wilson, Chy.—England.
Sir D. Baird v. Baird.—Scotland.
Lord Montgomerie v. Earl of Eglinton (remitted), Scotland.
1845, Polloe and Govan Railway Company v. Newton, et é con (abated),—Scotland.
Fordyce v. Sir H. Bridges.—Scotland.
Lady Mure v. The Marquess of Hastings, exparte.—Scotland.
Lord H. Hastings v. The Marquess of Hastings, exparte.—Scotland.
1846, Farmer v. Farmer, 1st appeal, Chy.—England.

Farmer v. Farmer, 2nd appeal, Chy.—England.
Lady E. Hastings v. The Marquess of Hastings, exparte.—Scotland.
King v. Simmonds, writ err., Q. B.—England.
Barrett v. Stockton and Darlington Railway Company, Chy.—England.
Mayor, &c., of London v. The Attorney-General, Chy.—England.
Thornycroft v. Crockett, exparte, Chy.—England.
Ranger v. Great Western Railway Company, exparte, Chy.—England.
Foley v. Hill (abated), exparte, Chy.—England.
Berry v. Morse, exparte.—Scotland.
Evans v. Scott, exparte, Chy.—England.
Irving v. Manning, writ err., Exch. Chamber.—England.
The Edinburgh and Glasgow Railway Company v. The Provost, &c. of Linlithgow.—Scotland.
Gerahty v. Malone, exparte, Chy.—Ireland.
Lady E. Thynne v. The Earl of Glengall, Chy.—England.
Madocks v. Roberts, Chy.—England.
The Taff Vale Railway Company v. Nixon, Chy.—England.
Mackenzie v. Scott.—Scotland.
Rowley v. Adams, exparte, Chy.—England.
Christie v. Allen (or Hoskins).—Scotland.
Weir v. Crawford.—Scotland.
Stewart (or M'Grigor) v. Denniston.—Scotland.
Marques of Tweeddale v. Murray, exparte.—Scotland.
Boughton v. Boughton, exparte, Chy.—England.
Paul v. Dickson.—Scotland.
Sir R. C. Glyn, Bart. v. Soares, writ err.—England.
Repton v. Hodgson, writ err., Exch. Chamber.—England.
Tommey (pauper) v. White, exparte, Chy.—Ireland.
Drummond v. The Attorney-General, exparte, Chy.—Ireland.
MacLachlan (or Fyffe) v. Gillies.—Scotland.
Atkinson v. Manley, writ err. Exch. Chamber.—England.
Fleming v. Newton.—Scotland.
1847, Galbraith v. Colville.—Scotland.
Graham v. Mackay, exparte.—Scotland.
Turnbull v. Cowan.—Scotland.
Sir Thomas Wilde v. Gibson, Chy.—England.

CHANCERY CAUSE LISTS.

Sittings after Hilary Term, 1847.

Lord Chancellor.

APPEALS.

S. O. G.	Attorney-Gen.	{ Masters & Wardens, &c. of the City of Bristol. }	appeal
S. O.	Black	Chaytor	do.
S. O.	Johnson	Reynolds	fur. dirs. by ord.
S. O.	Watts	Hyde	appeal
	Brighton	North	appeal pt. hd.
	Penny	Turner	appeal
	Caton	Rideout	do.
	Peacock	Bernot	do.
{	Willink	Bentinck	{ do.
{	Ditto	Ditto	{ do.
{	Chambers	Smith	{ do.
{	Case	Ditto	{ do.
{	Thornycroft	Warren	{ do.
{	Sowden	Mariott	{ do.
{	Flight	Ditto	{ do.

Heath	Chadwick	do.
Chappell	Purday	do.
Apperley	Page	do.
The Company of Proprietors of the Grand Junc- tion Canal	Dimes	appeal
Jones	Rose	do.
Henderson	Eason	do.
Mason	Wakeman	do.
Dean of Ely	Cash	do.
Cooper	Webb	do.
Lewis	Cooper	do.
Perry	Neddowcroft	} appeal
	9 causes	
Blair	Bromley	do.
Rawlins	Moss	do.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Van Sandau v. Cook, dem.
 Wigginton v. Pateman, as to parties.
Easter Term, Stert v. Cooke.
 Wilson v. Wilson, exons. 2 sets, pt. hd.
Easter Term, Hickson v. Smith, at deft.'s request.
 Hemming v. Spiers, exons.
 Chambers v. Waters, exons.
 Foster v. Vernon, fur. dirs. and costs.
 Vale v. Sherwood, 7 causes, ditto.
 Haffenden v. Wood, exons.
 Branscomb v. Branscomb, fur. dirs. and costs.
 { Stammers v. Halliby, 3 causes, fur. dirs.
 { Ditto v. Battye, by order.
 Dorville v. Wolff, fur. dirs. and costs.
 Richards v. Patterson, fur. dirs. and costs.
 Woodman v. Madgen, fur. dirs. and costs.
 Attorney-Gen. v. Pearson, exons. and fur. dirs.
 Wait v. Horton, fur. dirs. and costs.
 Groom v. Stinton, 4 causes.
 Baxter v. Abbott, fur. dirs. and costs.
 De Beauvoir v. De Beauvoir, fur. dirs. and costs.
 Beale v. Warder, rehearing.
 Turner v. Simcock, fur. dirs. and costs.
 Booth v. Lightfoot, fur. dirs. and costs.
 { Ludlow v. Guilleband, fur. dirs. and costs.
 { Ditto v. Fenoulhet, cause.
 Howell v. Saer.
 Attorney-Gen. v. East India Company.
 Roberts v. Cardell, exons.
 Warwick v. Richardson, exons. and fur. dirs.
 Morgan v. Kingdon, fur. dirs. and costs.
 Lewis v. Hinton, fur. dirs. and costs.
 Wilson v. Williams.
 Robotham v. Amphlett, exons.
 Ellison v. Clark.
 Bailiff, &c. of Bridgnorth v. Collins, fur. dirs. and costs.
 Gaches v. Warner, 2 causes.
 Birch v. Joy, fur. dirs. and costs.
 Wilson v. Jones, exons.
 Green v. Bailey.
 Staker v. Wilson.
 White v. Briggs, exons. 3 sets, and fur. dirs.
 Damer v. Portarlington, 2 causes.
 Greenham v. Greenham, fur. dirs. and costs.
 Bnrrow v. Hardey, fur. dirs. and costs.
 Middleton v. Elliot, fur. dirs. & costs.
 Hyde v. Neate, exons. and fur. dirs.
 Bownass v. Abbott, exons.
 Mapp v. Elcock, ditto.
 S. O. G., Myers v. Macdonald, 2 causes.
 Garratt v. Lancefield, fur. dirs.
 Amey v. Walker, 2 causes.

Short, Jones v. Woods.
 Ewart v. Phillips, fur. dirs. and costs.
 Short, Belcher v. Lockey, 2 causes.
 Woodfall v. Bagster, fur. dirs. and costs.
 Gervis v. Gervis, fur. dirs. and costs.
 Short, Fairfax v. Drought.
 Grant v. Hutchinson fur. dirs. and costs.
 Thompson v. Day ditto.
 Attorney-General v. Wilson.
 Rawlins v. Berkett, fur. dirs. and costs.
 Lewes v. Lewes.
 Warner v. Lett, 2 causes.
 Harris v. Green, ditto.
 Richards v. Griffiths, fur. dirs.
 Spire v. Spire, fur. dirs. and costs.
 Ward v. Gardiner, fur. dirs. and costs.
 Sewell v. Murray, 3 causes.
 Whitehall v. Sanders, 2 causes.
 Short, Burton v. Taylor, fur. dirs.
 Grundry v. Newbold.
 Cleaver v. Sloan, fur. dirs. and costs.
 Brandon v. Brandon, 9 causes, exons.
 Johnstone v. Ure.
 Short, Jackson v. Cook.
 Green v. Gloaves.
 Cutto v. Bank of England.
 Feltham v. Clark.
 Thynne v. Tooke.
 Winnall v. Featherstonhaugh.
 Allen v. Williams.
 Austin v. Dutton.
 Bowden v. Brown.
 Scholfield v. Froggart.
 Hornbuckle v. Hornbuckle, fur. dirs. and costs.
 Mole v. Shaw.
 Shore v. Shore, fur. dirs. and costs.
 Attorney-Gen. v. Wright, ditto.
 Comber v. Sadler.
 Nightingale v. Smith, fur. dirs. and costs.
 Fanson v. Vaughan, ditto.
 Haggard v. Anderson, ditto.
 Trafford v. Brooke, exons. and ditto.
 Billingham v. Beasley.
 Sturgis v. Birch.
 Smith v. Bury and Ipswich Railway Company.
 Bayden v. Watson, fur. dirs. and costs.
 Joynton v. Bushby.
 Fallofield v. Cross.
 Clare v. Clare, 2 causes.
 Short, Wells v. Eyles.
 Goodbody v. Shuter.
 Short, Allen v. Hurrell.
 Gilchrist v. Cator.
 Hitch v. Hitch.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

To fix a day, Sibson v. Edgeworth, 2 dems.
 S. O., Petty v. Atherley, pt. hd.
 S. O., Baddeley v. Carwen, pt. hd.
 Smith v. Wilkinson, 3 causes.
 Dowsing v. Churchyard.
 Habersham v. Burton.
 Batterfield v. Rayner.
 Tarte v. Phillips.
 E. Tm., Atkinson v. Glover.
 Mayor, &c. of Rochester v. Lee.
 Glascott v. Long.
 Bradley v. Teale.
 Easter Term, Smith v. Smith, 3 causes.
 Parken v. Taylor.
 Hemming v. Dingwall.
 Easter } Kortwright v. McQueen. }
 Term. { Ditto v. Barlow. }

Allen v. Snelling.
 Johnson v. Corrie.
 Evelt v. Greatwood.
 Fenton v. Nalder.
 Daubuz v. Peel, 2 causes.
To be fixed, Vanzoller v. Doorman, fur. dirs. and costs.
 Brazier v. Piper.
 Hore v. Smith, 2 causes.
 Stikeman v. Dawson.
 Garbett v. Whitehead.
 Bowmer v. Parkenson, fur. dirs. and costs.
 Shelswell v. Preedy.
 Craven v. Stubbins, 2 causes.
 Burton v. Mount.
 Stooke v. Vincent.
 Hughes v. Griffith.
 Burchett v. Howett.
 Okill v. Whittaker.
 Sargent v. Roberts.
 Beeston v. Beeston.
 Munday v. Guyer.
 Knight v. Jenkins, fur. dirs. and costs.
 Court v. James.
 Collis v. Robins.
 { Davis v. Lord Huntingtower } fur. dirs. and costs.
 { Ditto v. Pennell } costs.
 Burnett v. Burnett, exons. and fur. dirs.
 Wood v. Anderson, ditto.
 Brazier v. Legg.
 Senger v. Hawkes, fur. dirs. and costs.
 Seale v. Buller.
 Green v. Green.
 Short, Burnie v. Burnie.
 Rutherford v. McCollum.
 Gregory v. Wade.
 Tullock v. McClellan.
 Wilson v. Wilson.
 Morgan v. Pritchard.
 Tinker v. Cunningham, fur. dirs. and costs.
 Ellice v. Cannan.
 Short, Heldyard v. Field, fur. dirs. and costs.

Vice-Chancellor Wigram.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Curwen v. Daniel, dem.
 Plowden v. Thorpe.
 Tolson v. Dykes, 3 causes.
 Stephenson v. Everatt, fur. dirs. and costs.
 Sharp v. Taylor, fur. dirs. and costs.
 Butlin v. Masters ditto.
 Attorney-Gen. v. Florance, suppl. bill.
Part heard, Dawson v. Paver.
 Feb. 13, Manser v. Jenner; Jenner v. Manser.
 Tipping v. Clark.
 Matthews v. Bowler.
 Spencer v. Church.
 Malcolm v. Scott, 2 causes.
 Evans v. Cave.
 Hicks v. Hough, fur. dirs. and costs.
 Lancaster v. King.
 Attorney-General v. Governors of Harrow School.
 Yearsley v. Yearsley, 2 causes.
 Hughes v. Stable, fur. dirs. and costs.
 Thirby v. Holloway.
 Belsham v. Percival, at request of deft.
 Williams v. Teale, 3 causes.
 Symes v. Eyre.
 Attorney-General v. Croom, fur. dirs. and costs.
 Shailers v. Groves, fur. dirs. and costs.
 Kempson v. Abbott, fur. dirs. and costs.
 Newton v. Sadler, fur. dirs. and costs.
 Turner v. Baker.
 Morrell v. Pritchard.

Black v. Leicester.
 Myers v. Myers.
 Parsons v. Middleton.
 Tovey v. Tovey, fur. dirs. and costs.
 Payne v. Coles.
 Chard v. Chard, fur. dirs. and costs.
 Whitbread v. Sanger.
 Lechmere v. Pennell.
 Thompson v. Maddy.
 Dowle v. Lucy, fur. dirs. and costs.
 Rochester v. Kirsopp, ditto.
 Chambers v. White.
 Impey v. Impey, fur. dirs. and costs.
 Massey v. Moss, 3 causes, ditto.
 Walles v. Urquhart.
 Mullings v. Hook, fur. dirs. and costs.
 Moody v. Hebbard, ditto.
 Attorney-Gen. v. Mayor of Exeter.
 Batchelor (pauper) v. Middleton.
 Davenport v. James.
 Scott v. French.
 Humble v. Shore, 5 causes, fur. dirs. and costs.
 Sober v. Kemp.
 Greville v. Shadwell.
 Bursay v. St. Barbe, fur. dirs. and costs.
Causes transferred by Lord Chancellor's Order,
29th Jan., 1847, to V. C. Wigram.
 Day v. Slade, fur. dirs. and costs.
 Lufkins v. Lufkins, fur. dirs. and costs.
 Nightingale v. Goulbourn, fur. dirs. & costs.
 Atkins v. Hatton, fur. dirs.
 Milne v. Leo, Addinsell v. Same, fur. dirs. and petition.
 Langston v. Cozens, Same v. Leaver, fur. dirs. and costs.
 Ashburst v. Mill.
 Kennett v. Tytherleigh
 Lovett v. Soames, 2 causes. Same v. Butler.
 Skinner v. Manser; Same v. Alec.
 Attorney-General v. Stone.
 Skev v. Ody, fur. dirs. and costs.
 Same v. Harris, Whitway v. Ody, ditto.
 Wall v. Wall, fur. dirs. and costs.
 Simpson v. Earles; Same v. Same.
 Abram v. Ward.
 Elliott v. Lyne; Same v. Symons.
 Norton v. Hepworth.
 Kensit v. Cressy, 2 causes; Same v. Swann.
 Costobadie v. Costobadie; Same v. Hollingsworth
 Jackson v. Nottidge.
 Odell v. Lockett.
 Wright v. Lilley.
 Hall v. Hall.
 Calvert v. Richards.
 Field v. Bentley.
 Muston v. Bradshaw.
 Bond v. Harvey.
 Smith v. Walters.
 Hicks v. Graham.
 Williams v. Powell; Sames v. Davies.
 { Staslichmidt v. Lett; Same v. Clowes,
 { Warner v. Lett, Same v. Clowes.
 Jennings v. Bonser; Same v. Balton
 Gray v. Seabrook.
 Attorney-General v. Ward.
 Axe v. Andrews.
 Lea v. Smith.
 M'Farlane v. Underwood.
 Field v. Brown.
 Hatchard v. Hatchard.
 Stanbury v. Dunning.
 Hoare v. Shaw.
 Parlabeau v. Wickham.

NISI PRIUS CAUSE LISTS.

Middleses.

(Continued from page 338, ante.)

Queen's Bench.

G. W. F. Cook
Philp
E. M. Elderton
Clarke and Co.
J. L. Jones
Vincent and B.
Dawes
Atkinson
Edward Govett

Edwards
Cannan
Carnegy
The Queen
Sparrow
Cockburn and another
The Queen
The Queen
Stacy

Marriott
Parker and others
Bacon and another
Alexander
Petty and others
Ilderton
S. J. Moreau
Lomax and another
Sieveking and others, as-
signees, &c.

C. Tudway
Tres. Webber
Ca. Dunn and Co.
Indt. W. C. Gates
Ca. A. A. Walter
Prom. Person
Perjury, Hobler
Indt. Fitzpatrick.

F. T. Donne
Thomas Foller
T. M. Parker
Same
W. Smith
Wm. Whalley
Same
W. Williams
Sargent
Blackford
L. Norton
John Bell
Mawe
Philp
J. L. Dale
H. T. Roberts

Scott
The Queen
Clerk
Same
Wallis
Lindley and another
Backett
Felton
Wyld
The Queen
Carter
Houghton
Dean
Hitchins
The Queen
Butler

S. J. Blacket
S. J. The Justices of Devon
Morrison
S. J. Hughes
Taylor
Macnamara
Higinbotham
Lousada
Hughes
S. J. King
Harris and another
Silverlock
Wood
Gibbins
Broome
Hall

Dickson and O.
Ca. Grimaldi and Co.
Beevor and B.
Prom. Hindman and H.
Prom. Amory and Co.
Tres. Person
Dt. Rickards and W.
Prom. Binns
Dt. King and A.
Dt. Colley, Smith and Co.
Indt. Richardson
Tres. J. Humphrys
Ca. Newton and E.
Pro. Rickards and W.
Dt. Bodman
Indt. Rickards and W.
Pro. G. Bickley

NISI PRIUS SITTINGS.

London.

Queen's Bench.

Adjournment Day Tuesday, February 16, 1847.

PARLIAMENTARY COSTS.

House of Commons.

MR. HUMPHREY has proposed the following resolutions:—

That a taxing officer be appointed, and a scale of fees, costs, and charges be authorised and published by Mr. Speaker.

That the taxing officer shall present an account of the expenses for promoting or opposing each bill, distinguishing the amount paid as fees to each House of Parliament, the amount for writs and other expenses, and for professional services.

THE EDITOR'S LETTER BOX.

THE judicious advice of "A Constant Reader" as to future law reforms shall be noticed. We shall be glad of his further suggestions.

The list required by "A Subscriber since 1836" shall be considered.

The Analytical Digest comprised in each volume is easily referred to. For instance, in vol. 32, all the points relating to Costs will be found at pp. 224, 394; on Attorneys, at pp. 226, 393; Construction of Statutes in the Common Law Courts, 122, 535; in Equity, 322; Evidence, 222, 348; and so of Pleading, Practice, &c. Each number contains a section complete in itself, useful and readable, both by practitioner and student.

A correspondent, with reference to the case of *Cooke v. Crawford*, on which an article appeared at p. 267, *ante*, requests to direct the attention of our readers to the following cases as adverse to that decision, and to remark that eminent conveyancers consider the doctrine it propounds of the invalidity or impropriety of a devise of trust estates quite unsound. He refers to *Titley v. Wolstenholme*, 7 Bea. 425; *Hanson v. Lake*, 2 Yo. & Coll. 328; *Eastern Counties Railway Company v. Tufnell*, 3 Railway Cases, 133; *Midland Counties Railway Company v. Westcomb*, 11 Sim. 57.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 20, 1847.

—"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

PRIVILEGES OF THE HOUSE OF COMMONS. "GOSSETT v. HOWARD."

THE disruption of political parties, the monetary embarrassments of the country, and the urgent difficulties with which the legislature have to grapple, in consequence of the scarcity of provisions in some parts of the United Kingdom, have naturally drawn off the attention of the largest portion of the community from the proceedings of the Courts of Justice, even when those proceedings involve matters seriously affecting popular rights. Perhaps, the pressing importance of the topics adverted to, sufficiently accounts for the indifference with which the judgment of the Court of Error has apparently been received, with respect to a case which in its earlier stages excited no inconsiderable degree of public interest and attention. It is the peculiar property of decisions of this nature that their influence is not confined to the period, or even to the age, in which they happen to be pronounced; and as the case to which we refer must necessarily occupy a prominent place in the constitutional history of this country, no apology can be requisite for supplying our readers with materials for forming an opinion for themselves, by giving a brief outline of the case and judgment lately pronounced.

The case of *Howard v. Gossett*, as many of our readers will recollect, arose out of the proceedings in *Stockdale v. Hansard*. Mr. Howard, as the attorney of the plaintiff Stockdale, neglected or refused to obey the order of the Speaker, and Sir William Gossett, the Serjeant-at-Arms of the House

of Commons, entered Mr. Howard's house for the purpose of taking him into custody; and the legality of this proceeding was put in issue by an action of trespass for assault and false imprisonment, brought in the Court of Queen's Bench, in which Mr. Howard was the plaintiff, and Sir William Gossett the defendant. The defendant in this action justified under the warrant of the Speaker of the House of Commons, which was as follows:—

"Martis, 4 die Februarii, 1840.

"Whereas, the House of Commons have this day ordered that Thomas Burton Howard be sent for in the custody of the Serjeant-at-Arms attending this house; these are, therefore, to require you to take into your custody the body of the said Thomas Burton Howard, and all mayors, bailiffs, sheriffs, under-sheriffs, constables, headboroughs and other officers are hereby required to be aiding and assisting to you or your deputy in the execution thereof—for which this shall be your sufficient warrant.

"Given under my hand, this 4th day of February, 1840.

(Signed) "CHARLES SHAW LEFEVRE.

"To the Serjeant-at-Arms attending the House of Commons."

To the defendant's pleas of justification the plaintiff demurred, and after an elaborate argument, the majority of the Court of Queen's Bench, the late Mr. Justice Williams dissenting, held, that the Speaker's warrant was to be construed in the same manner as warrants issued by other officers having a limited jurisdiction, and that it was bad in law, as it did not disclose any sufficient ground for the plaintiff's arrest.

A writ of error was brought upon this judgment, and argued before the late Chief

Justice of the Common Pleas, Justices *Coltman, Maule, and Cresswell*, and Barons *Parke, Alderson, and Rolfe*. The judgment of the court, which would appear to have been unanimous, was delivered by *Parke, B.* Upon the question, whether the House of Commons was in all cases to be the sole judge of its own privileges, or how far an order of the House of Commons would in every case afford a justification for acts done in obedience to it, the Court of Error expressly decided that they did not feel called upon to pronounce an opinion. The question was, whether the Speaker's warrant justified the plaintiff's arrest? If the warrant was valid in form, the plaintiff in error was justified; if the warrant was invalid, it afforded no protection for the acts done under it. In determining this question, it was necessary in the first instance to consider, upon what principle, the warrant of the Speaker of the House of Commons directed to an officer of the House should be construed? If it were to be construed with the same strictness as the warrant of a justice of the peace, or the judge of an inferior court, the warrant under consideration was undoubtedly informal and invalid. Construing the warrant upon this principle, it was clearly defective in not stating directly for what purpose the person named in it was to be arrested, or how long he was to be detained in custody. The majority of the judges of the court below seemed to think the warrant was bad because it did not show on the face of it a sufficient jurisdiction. The Court of Error, however, was of opinion, that the warrant of the Speaker of the House of Commons was to be construed upon the same principles as a writ issued from one of the superior courts of law. The House of Commons was a branch or part of the High Court of Parliament, which is above all the courts of law. Applying the same principles of construction to the Speaker's warrant, as they would have been bound to do, if it were a mandate issued by one of the superior courts, the Court of Error thought it clearly valid and sufficient. The House of Commons, as part of the High Court of Parliament, had a perfect authority to act in matters affecting itself, and was not bound to state on the face of a warrant which it issued to its own officer, the Serjeant-at-Arms, the formal matters which must be set forth in the warrant of an inferior magistrate. The superior courts at Westminster claimed and exercised the

same authority, and the court was clearly of opinion that the House of Commons had equally with the superior courts an undoubted right to take and keep in custody any person the house might think guilty of contempt, and the Speaker's warrant was a sufficient authority to the Serjeant for doing so. It had been argued at the bar, that if such a power were inherent in the House of Commons it might be much abused, and there could be no remedy. That was undoubtedly so; but it was precisely the same case with the exercise of the undoubted authority of the superior courts at Westminster. They must presume that the exercise of the power would be properly directed, and that if it should happen to make any undue exercise of its power, the sense of justice of the house would, like that of the courts of law, grant redress. They must, therefore, reverse the judgment of the Queen's Bench, and decide in favour of the defendant on all the counts.

Assuming the premises upon which this judgment is founded,—namely, that the House of Commons is to be considered in the same light as one of the superior courts of law—to be correct, there is little reason to doubt that the conclusion to which the judges sitting in the Exchequer Chamber have come is sound and supported by authority. The analogy between an assembly constituted as the House of Commons is, admittedly without the power even to administer an oath, and essentially defective in so many of the attributes of a court of justice, does not appear to be very striking, or when examined into, quite perfect.

At all events, it must be considered that the opinion of a majority of the judges is expressed in the judgment now delivered by the Court of Exchequer Chamber, and the important principles involved in that decision must govern the proceedings of all courts of justice, unless, indeed, we could imagine that the judgment of the Court of Error may be reversed upon an appeal to the House of Lords.

The House of Commons has directed that the short-hand writer's notes of the judgment of the Exchequer Chamber should be printed, and as soon as a copy can be procured our readers shall have the *ipsissima verba* in which the judgment of the Exchequer Chamber was pronounced.

PROSPECTS OF THE PROFESSION.—LAW REFORM.

ALTHOUGH it will be necessary to watch with vigilance the introduction into parliament of any measure for the alteration of the law, there seems reason to expect that less mischief will be done in the course of this session than on several recent occasions.

It is probable that the projects of conveyancing reform, as we lately stated, will be suspended for the purpose of a more thorough investigation than they have hitherto undergone. Neither the General Registry Bill nor the Short Form Conveyancing Bill will, we believe, be introduced until the New Real Property Commissioners shall have made their report. Individual members of either house may, of course, bring forward any specific measure; but, until the whole subject has been considered, it may reasonably be expected that the government will not sanction any partial alterations. We are told, that in our announcement made in the number for the 6th February, there is a mistake as to some of the names of the intended commissioners. It appears, however, that the main facts were correctly stated, and the other names which are spoken of can be given when definitely known.*

The Lord Chancellor's Bill for amending (and, we hope, consolidating) the Law of Bankruptcy and Insolvency, will necessarily occupy much time in preparing and settling. We look for it with considerable interest, and expect it will comprise many useful amendments. There are some provisions relating to the rights of practitioners to be heard in the Bankruptcy Courts, and particularly in the country districts, which will require particular attention.

Whilst the bar, as congregated in its several Inns of Court and each Circuit mess, and numerous represented in Parliament, possess ample means of securing the independence of the general body, and promoting the interests of its members,—we would again exhort the Attorneys and Solicitors to extend the sphere of the various existing law societies, and assist in the establishment of others. Many large districts possess no associated body. Apart from all other important considerations, these societies effect much good by

promoting fair and honourable practice and in the large towns law libraries have been formed and useful lectures delivered. The tendency of such associations cannot fail to be beneficial in many respects. They prevent irregular and improper practice; they facilitate the transaction of professional business; and whilst they raise the character of the profession, they advance the interests of the public. We therefore say to every attorney and solicitor, "Join the law society of your district; do not be deterred because it has not accomplished all you expected; your accession will strengthen, and your suggestions will assist it. Let there be no upbraidings of past deficiency; but lend your aid in rendering these institutions more beneficial in future."

By the union of the profession, the means of a better system of legal education may be secured, the rules of practice may be improved, and the general body may advance to a much higher position in public esteem than it has ever yet attained.

THE SMALL DEBTS ACT.

NOTICE OF ORDERS IN COUNCIL.

THE *Legal Observer* of the 2nd January, (p. 193,) contained the 1st Order of Council for carrying the Small Debts Act into operation, concluding with the notice, "that her Majesty, with the advice of her Privy Council, would take into consideration the propriety of making orders for the purposes of the act and for putting the act in execution in every county throughout England and Wales."

We ventured at the time to point out that this *general* notice of a wholesale order could not be a sufficient compliance with the act, which evidently required a special notice of the order intended to be applicable to each county, and which intended order should specify at what places in each county the courts would be holden. We find that the course then suggested has been adopted, and our last number (of 13th February, p. 345,) comprised a notice of the intended orders for each county, and the places where the courts are to be held.

It will be observed, that the publication in the *Gazette* is in effect a *mere notice*, founded upon the report of the Privy Council, recommending the orders therein contained, and that after the expiration of a month from the date of the publication

* There will probably be seven commissioners.

(6th Feb.) the propriety of making the orders will be taken into consideration. The report recommends that the orders should come into operation on the 15th March.

In the meantime, and before the expiration of the month, we presume, any objections to the proposed orders, or any suggestions for their alteration or improvement, may be made by petition to the Privy Council. Such, at least, seems to have been the intention of the legislature.

It may be observed, also, that under the 8th section of the act (9 & 10 Vict. c. 95,) "any order in council made for the purposes of the act shall be published in the *London Gazette*." After the proposed orders, of which notice has thus been given, shall have been considered and made, such actual orders must therefore be published in the *Gazette*.

REPEAL OF ATTORNEYS' ANNUAL CERTIFICATE DUTY.

We observe that several petitions have been already presented for the repeal of the attorneys' certificate duty,—that unjust and unequal tax, levied on one branch only of the profession of the law, and on no part of either of the other learned professions. The petitions hitherto presented have not been numerously signed; but we know that many others can be procured from all parts of the country, bearing thousands of signatures. From information, however, on which we can rely, the general opinion is that the present is *not a favourable time* for any general movement. We are glad that a considerable number of petitions have been presented, in order that the claim to redress may be kept before the eye of the legislature; but until the suffering in Ireland and Scotland has been abated, and there appears some reasonable prospect of relief from impending famine, the exertions of the profession to obtain any personal advantage, (however strictly just,) would, we apprehend, be not only unsuccessful, but be deemed ungracious. The sense of justice would be overwhelmed by the calls of humanity, and we fear the ultimate success of the measure would be materially retarded. We would, therefore, venture to advise that petitions be in readiness, but not presented till more favourable opportunity occurs.

BRIEF NOTES OF DECISIONS IN AND AFTER HILARY TERM.

TAXATION OF BILL OF COSTS AFTER PAYMENT UNDER PROTEST.

UPON an application to tax a solicitor's bill after payment, under the 6 & 7 Vict. c. 73, s. 41, the facts appeared to be, that a party named Parlabeau mortgaged his estate to two persons, who were represented by Mr. Harrison as their solicitor. The mortgagees consented that the mortgaged premises should be sold, and undertook that, upon satisfaction of the mortgage claims, they would reconvey to the mortgagor to enable him to make out a good title to the purchaser. The sale took place upon this understanding in 1846, and after the sale, Mr. Whickham, the trustee of Parlabeau, who had died, applied through his solicitors to Mr. Harrison, the solicitor of the mortgagees, to reconvey the property, but he refused to let them execute the necessary deeds until his bill of costs was paid. The bill was accordingly paid under protest. Mr. Wickham now petitioned to have the bill taxed, on the ground that it was paid under protest, and that it contained objectionable items and overcharges. The ground of objection to some of the items was, that though they would be allowed on taxation between the mortgagees and the solicitor, yet they would not be allowed as between the mortgagor and mortgagees.

The Master of the Rolls said, that it was a great mistake to suppose that a protest at the time of payment was alone sufficient to save the right to tax. Protests went for nothing, unless there was some other special circumstance, as want of opportunity to examine the bill, which was not the case here. It was an error also to suppose that the mortgagor was entitled to have the bill of the mortgagees' solicitor taxed, as between himself and the solicitor, on the principle that "everything was to be struck off which the mortgagee could not charge against the mortgagor in the account between them." That there were charges in the bill which the mortgagee could not charge against the mortgagor in the account between them, was no ground for taxing the bill, if the charges were proper as between the solicitor and mortgagee. The grounds for the petition were therefore reduced to that of overcharges, but that alone was not sufficient to make a bill taxable after payment, and he should dismiss the petition with costs. *In the matter of Harrison*. Rolls Court, 28th Jan.

CONSTRUCTION OF WILL.

Mary Shearman, by her last will bequeathed the whole of her residuary personal estate to trustees, with a direction to pay the income in equal shares between her three cousins, Mrs. Johnson, Mrs. Lovell, and Mrs. Atty, "and at their decease, to be divided amongst their daughters." The question was, whether the daughters of each cousin took their parents' share on their respective deceases, or whether the cousins were to have the income until all

were dead, and then the whole fund was to be divided amongst the daughters of all the cousins equally, *per capita*. His lordship held, that on the death of each cousin, her daughters took her share. *Willis v. Douglas*. Rolls Court, 29th Jan.

HABEAS CORPUS ACT, TO WHAT COMMITMENTS APPLICABLE.

To a declaration in debt by the party grieved, to recover the penalty of 500*l.*, (under stat. 31 Car. 2, c. 2, s. 10,) from Lord Lyndhurst for refusing to grant a writ of habeas corpus upon the plaintiff's application, when the defendant held the office of Lord Chancellor, the defendant demurred, on the ground that it did not appear on the face of the declaration that the plaintiff, when he applied for the writ, was imprisoned or detained for any crime or supposed criminal matter. For the demurrer it was argued, that the whole scope of the habeas corpus act showed, that it was only meant to apply to cases where parties were committed for some crime or supposed crime. In support of this view, the defendant's counsel particularly relied upon *Huntley v. Luscombe*, 2 Bos. & P. 530, where the question was, whether a commitment on a conviction under the Excise Laws is a commitment for a crime under the act; and *Rex v. Hobhouse*, 3 B. & Al. 420; 2 Chit. R. 207; where the King's Bench held, that the act did not apply to a commitment by the House of Commons for a breach of privilege, because it was confined wholly to cases of commitment for crime. The plaintiff appeared in person to support his declaration, but could scarcely be said to have entered into any legal argument. The court thought the objection to the declaration must prevail, and gave judgment for the defendant. *Andrews v. Lord Lyndhurst*, Q. B. 9th Feb.

CHURCH RATE MADE BY A MINORITY, WHEN VALID?

The proceedings of the parishioners of Braintree, Essex, has again given rise to an important decision on the subject of church-rates. The question, whether the churchwardens of a parish, after a rate for the necessary repairs of the parish church has been proposed and refused by a majority of the parishioners in vestry assembled, can of their own sole authority, and without any parish meeting, impose a valid rate on the parishioners? was discussed and decided in the negative by the Court of Queen's Bench in 1840, in the case of *Burder v. Veley and another*, 12 Ad. & El. 233. A writ of error was afterwards brought on that judgment in the Exchequer Chamber, which was argued with great learning and ability by the late Sir William Follett for the churchwardens, (the plaintiffs in error,) and by the then Attorney-General, (Sir John Campbell,) for the dissentient parishioners. The Court of Exchequer Chamber affirmed the judgment of the Court of Queen's Bench; but the appellate tribunal also held, "that the obligation of parishioners to repair the body of the parish

church is by the common law, and is not qualified or voluntary, but absolute and imperative; and when repairs are needful the only question on which the parishioners in vestry can by law deliberate is, how the obligation may be best, most effectually, and most conveniently and fairly between themselves carried into effect." In the case recently under consideration, the churchwardens called a meeting for the purpose of making a rate; and a reasonable rate was proposed, to which proposal an amendment was moved by one of the parishioners condemnatory of the principle of church rates, and this amendment was carried by a large majority of the vestry meeting then assembled. The churchwardens and the minority of the parishioners then assembled thereupon agreed upon a rate, which the present plaintiff, Mr. Gosling, refused to pay. The case came before the Court of Queen's Bench upon demurrer to a declaration in prohibition, and, after mature deliberation, the court declared that the course pursued by the majority was not warranted by law. The amount and proportions of the rate were fit subjects for their consideration, and not whether any rate should be made. By voting for an irrelevant resolution, which was as wide of the question they were called upon to decide, as if they had passed a resolution condemnatory of the Queen, or voted the Established Church a nuisance; the majority had in effect thrown away their votes. The proposition for a church rate was not met by what could be called a real and legal amendment; and in effect it remained without any amendment being proposed in respect of it. The voice of the parishioners who had done their duty could not be overborne by those who pursued a course foreign to the purpose for which the meeting was convened. The majority meant a majority of those who took part in the proceeding for which the vestry assembled; and other persons who attended must be as little considered as if they were absent and assenting to the acts of those who were willing to perform their duty. Upon these principles, and in accordance with the principles laid down by the Court of Exchequer Chamber in *Veley v. Burder*, the court now determined that the rate made by the churchwardens and minority of the persons present, under the peculiar circumstances above stated, was a valid rate which ought to be enforced. Judgment was therefore given for the defendant.

THE PRESENT STATE OF LEGAL EDUCATION.*

THE state of legal education is becoming more and more the subject, as well of public as professional attention. It is

* Letters on the present state of Legal Education in England and Ireland, addressed to George Alexander Hamilton, Esq., M. P. for

much to be regretted that the report of the special committee of the House of Commons, and the evidence adduced before it, are so long delayed. We presume the difficulty lies in completing the Report and settling the propositions to be submitted and the improvements to be recommended. Mr. Wyse, the Chairman of the Committee, to whom both the profession and the public are greatly indebted for originating and conducting the inquiry, being now a member of the government, cannot, we presume, devote much time to this important subject, but, doubtless, he will complete the report as speedily as practicable. If no early conclusion can be arrived at, it may be advisable to give publicity to the evidence, and let the report follow hereafter, though, doubtless, it would be preferable to receive the opinions of the committee along with the evidence.

In the meantime we find that scattered portions of the evidence make their appearance in print, though, perhaps, not strictly in accordance with the rules of the House. The *Law Review*, in the number for November, stated the effect of part of the evidence.^b And in the valuable work by Mr. Joy, which we shall now proceed to notice, several extracts are given, evidently derived from a careful perusal of the evidence.

We are glad to find that the cause of legal education has received the advantage of Mr. Joy's able advocacy. His letters on the present state of the question have been very opportunely published. He treats of the whole subject in a judicious, attractive, and concise manner, and has arranged his work under the following heads:—

“1. Present state of legal education in England and Ireland. Evidence of the English and Irish Bar.

2. Education of foreign jurists contrasted with that in England and Ireland.

3. Policy of vesting the control of legal education in the benchers. Funds at their command.

4. Proposed system of legal education. Course suggested by the Benchers of the English Inns of Court.

the University of Dublin. By Henry Holmes Joy, Esq., Barrister-at-Law. 1847. Hodges and Smith, Dublin: Maxwell, Bell-Yard, Lincoln's Inn. Pp. 151.

^b We are in possession of materials for stating a large part of the evidence, but doubt the propriety of doing so until authenticated by the parliamentary publication.

5. Indirect consequences. United education and social intercourse amongst students.

6. Policy of legal education in England of students for the Irish bar.

7. Moral consequences of the present state of legal education in England and Ireland. Overstocking of both branches of the profession.

8. Education of attorneys and solicitors. Evidence of English and Irish Solicitors. Conveyancing in Ireland.

9. Policy of combining legal education with the undergraduate course in the Universities. Advantages of classical studies. Partial substitution of law for the higher mathematics.

10. Indirect consequences of an improved system of legal education. A professorial class. Improvement of institutional works. Public law libraries.

11. Study of criminal law. Changes proposed in England in that branch of law. Their indirect effect upon legal education.”

On all these topics of investigation Mr. Joy has collected very valuable information, not only from the evidence before the committee, but from various other sources, and has given the result of his own experience and sound reflection on the manifold defects of the present system and the several means of improvement which ought to be adopted.

If our space permitted, we should be glad to extract copiously from various parts of these letters; but must confine ourselves to a few prominent points. With regard to the state of education for the bar, Mr. Joy says—

“When the ancient system of legal education in England, including readings, mootings, and exercises, began to decline, under which system there were assuredly much more profound lawyers than have ever been since, Lord Bacon lamented the want of a systematic education for the bar, and contemplated the foundation of a university, to be chiefly devoted to the acquisition of juridical knowledge, and to prepare men for public and official life. The opinion and testimony of such a man ought to encourage any attempts to carry into effect the improvement of legal education.

“At the present day one may be admitted to the bar without any previous preparation. He need not have read any book either of law or equity. There is no one to inquire whether he has or not. Let him produce a certificate of having eaten so many dinners at the inns of court, and having paid the accustomed fees, and he is at once admitted, without any test either of his moral or his intellectual character, or of his acquirements. This sounds very absurd. It is only long use that could render one insensible to such a state of things. It is no answer to say—men who are not well prepared, and who are not competent, will not rise in the profession.

"Qui cupit optatam cursu contingere metam
Multa tulit fecitque puer.

"Let it be remembered in whose hands the patronage of the young lawyer principally lies. In the present crowded state of the profession, arising in great part from the want of any educational test, the opportunities, as Mr. Starkie, Q. C., observes, of young men becoming known depends very much, not upon superior talent, but upon the patronage of solicitors, which previous education would in some measure obviate. I believe that attorneys of respectability find themselves often in a painful dilemma from the importunate pressing for patronage from brothers-in-law, cousins, nephews, and other kinsmen, who deem their relationship a sufficient claim, irrespective either of their acquirements or competency, to take in hand the cases of clients, who seldom inquire or know to what counsel their interests are intrusted, which they leave very much to the choice of their attorney."

Mr. Joy then adverts to the following evidence of Mr. Bethell:—

"That an individual taking up a book of modern reports, and observing the manner in which cases are argued, will not detect in them evidence of any great extent of reading, of any large acquaintance with the principles of the science of law, any familiarity with the works of any foreign or ancient jurists, which are deemed in all other countries to constitute the basis of legal education. He will observe in arguments a mere habit of calling upon the memory for the citation of what are more or less apt instances of adjudication of similar points found in the reports; and, in truth, the argument is most frequently a mere task of memory rather than of the enunciation and application of legal principles. Some step should be taken for checking the amazing number of reports, which will be found a most serious evil in the administration of justice.

"The accumulation of reports becomes now so great a burden upon the student and the judge, that not only is the student unequal to the task of anything like collecting or arranging them, but the judge is in perpetual apprehension lest some conclusion derived by him from principles may be found to be at variance with some reported decision contained somewhere or other."

"Mr. Bethell adds, 'Although I have no doubt that the inconvenience might be remedied by a better system of preliminary education, grounded upon broader and more philosophic principles, which would check the practice too general amongst us of substituting decisions for what I may denominate reasoning upon principles; yet I think the evil of the multiplication of reports might receive a shorter and quicker remedy by some agreed on resolution by the judges on this subject.'

Then as to the education of attorneys and solicitors, Mr. Joy notices the tes-

timony of several members of that branch of the profession, which shows, he thinks; that both in England and Ireland, the want of a sufficient suitable education for that profession is sensibly felt.

"Mr. T. D. Latouche, who has been nearly twenty years in that profession in Ireland, says, in his evidence, that he is not at all satisfied with the present state of the profession; and that there is a total want of legal education, except the mere practical routine of the solicitor's office; that no opportunities are afforded of acquiring anything but the practical details.

"Mr. Pierce Mahopy states, that he has been thirty-two years in that profession, and gives as the result of his long experience, that 'families in Ireland are exposed to very great evils from the want of competency on the part of solicitors in drawing up deeds in family transactions; and that the chief part of litigation is the fruit of want of competency on the part of the attorneys.' Sir George Stephen gives a very similar character of many members of his profession in England. There are about one thousand six hundred practising solicitors and attorneys in Ireland. The number also in England is so great, that Sir George Stephen says, 'as far as his acquaintance in his profession enables him to speak, not more than one-third are earning such an income by their profession as will enable them to maintain themselves and their families in respectability.' He suggests that no one should be admitted as an articulated clerk until eighteen years of age, and that he should pass an examination by a competent authority when articulated, and that no one be admitted into the profession earlier than twenty-two years of age; and that the term of clerkship should be reduced from five years to four, a previous general education of a competent character being required.

"The Incorporated Law Society in England has made considerable efforts to improve the education of this portion of the legal profession. It consists of about fourteen hundred members. Law lectureships and a library have been established. Each lecturer (a member of the bar) is paid one hundred guineas for twelve lectures; and besides the members of the society, who attend in right of their membership, about two hundred articulated clerks attend those lectures, each paying two pounds for the several courses in the year.* The lectures might be made more useful and effective, if oral and written examinations were connected with them. There is not (or was not very recently) any class instruction or examination by the lecturer. The system is therefore imperfect. Lectures, especially to such a class, without class instruction and examinations must be comparatively ineffective. Should lectures and examinations be established, whether for instruction of students for the bar, or of those intending to be solicitors or attorneys, some excellent suggestions

* See evidence of Mr. Maugham, Secretary of the Incorporated Law Society.

for impressing the subject of the lectures upon the mind of the student, and for exercising and developing his intellectual powers, will be found in a little work, called 'Lessons on Reasoning,' ascribed to the Archbishop of Dublin, and adapted for class instruction.

"Since the establishment of these lectures, the articulated clerks in London have shown a great anxiety to improve themselves as a class; and they have recently submitted a memorial to the Lord Chancellor and the Master of the Rolls, intimating their desire that some permanent and efficient steps should be taken to improve and systematize their education. They state, that the examination now adopted in England, preparatory to admission as an attorney or solicitor, has been of great advantage; but that there is no institution calculated to assist the articulated clerk in his studies; and that he has to struggle with so many difficulties, that he too often abandons himself to a despair of ever acquiring a sound or comprehensive knowledge of his profession. They propose a society, not collegiate, but institutional, to be an auxiliary to the office or chambers, where the theory and principles of the law may be adequately learned. It appears from the evidence of Mr. Maugham, an English solicitor, and of Mr. Payne, an articulated clerk, that many articulated clerks in London study for six and sometimes twelve months, under a barrister or conveyancer, previously to becoming attorneys. Mr. Payne says, 'that it can scarcely be expected from solicitors, whose time, if they are in practice, is so much occupied, to look after the education of their articulated clerks, who are left almost entirely to themselves; and the period of their apprenticeship is generally occupied in little more than technical forms.'

"He seems to contemplate no opposition on the part of solicitors allowing an hour or two in the day to be taken from the occupations which the articulated clerks now have, and applied to study, or to lectures, as the advantage which the solicitors would indirectly derive would infinitely counter-balance the loss of time for that period. He states, that the expenses of education of an articulated clerk, even in its present imperfect and unsatisfactory state, including the fee to his master, are from five hundred pounds to twelve. Should he go to a barrister for the purpose of carrying out his education, he incurs a fee at the rate of one hundred guineas a year. The same witness appears to say that *after* they have passed their examination for admission as attorneys, a great number of articulated clerks place themselves under a barrister for at least six months.

"In Ireland, also, there is a society of the attorneys and solicitors, the objects of which are partly the institution and support of a library for the use of the profession, and the providing means for the instruction of apprentices.

"A committee of that society has recommended that it should be one of the principal objects of the society that lectures should be delivered to afford an improved system of edu-

cation in the theory of the law, and in the rules and practice of the courts.

"They recommend also that it should be a further object to preserve the rights and privileges of the profession, and to guard its respectability by a vigilant attention to the preservation of upright and honourable practice, and to prevent the apprenticing of uneducated and improper persons, and their admission to the profession."

REFORM IN THE MASTERS' OFFICES IN CHANCERY.

A VERY judicious Report from the Equity Committee of the Law Amendment Society was read at a meeting of the society on the 17th instant, in which various suggestions were made for improving the mode of proceeding in the Masters' Offices.

Mr. S. Miller, in moving that the report be received, entered into various details for the purpose of showing the evils of the present system of procedure in the Masters' Offices, and the advantages likely to result from an alteration, founded upon the propositions contained in the report, and concluded his observations by expressing his belief, that those propositions if acted upon would prove most beneficial, both to the suitors and the practitioners of the court; to suitors, by enabling them to obtain speedy and effectual justice at a greatly reduced expense, and to solicitors by relieving them from an intolerable weight of unmerited obloquy, and at the same time releasing a considerable quantity of their capital which is now unprofitably locked up during unreasonable periods; but he added, that if his notions on the latter point were not well founded, and if the proposed changes were likely to reduce any fair *quantum* of professional charges, he trusted the members of the society who were practitioners in the court, of whom he knew there were several, would offer their suggestions to guard against such a result, in order that a proper scale of fees might be settled; for he was satisfied it was of the highest importance to the community that the practitioners in the Court of Chancery should be most respectable, and that respectability could only be ensured by a just appreciation and a liberal remuneration of professional services.

Mr. Miller also stated, in the course of his observations, that the committee had the sanction of the highest judicial authority, until lately presiding in Ireland, for stating that the mode of procedure suggested by the most material of the propositions contained in the report had been acted upon for some years past in the Master's office in that country, and had given the greatest satisfaction.

CHANCERY AND BANKRUPTCY REFORM.

To the Editor of the Legal Observer.

SIR,—Since we are led to expect some changes in an extensive nature in Chancery Practice, and the law of Bankruptcy and Insolvency, you would do well to urge, through the medium of your valuable and powerful work, the necessity of *totally* instead of *partly* only, repealing previous acts and abolishing previous rules upon the matters in question, so as to render the new laws and rules *intelligible and less troublesome* to the profession, and consequently more valuable to the public.

If the orders of May, 1845, had swept away *all* former orders and reordered such parts as were wished to stand, and have made less confusion and *variety* in time, such as twelve days for this act, and thirteen days for that act, they would have been rendered more simple and valuable to the profession and beneficial to the public; just look for one moment at the valuable time occupied in construing them. I hope shortly to see the rules of the court revised *once* more, even all those of 1845 abolished, and a new set sufficiently simple for the profession to understand, for who at present knows what parts *are*, or *are intended* to be, abolished?

Acts of parliament should also be extensive, and repeal all former acts upon the subject, Who knows how to proceed at bankruptcy and insolvency as the law stands at present?

So, greater regularity and *uniformity* might be observed in the charge for office documents (*if any*) in the public offices, and in the holidays, and hours during the day for keeping public offices open;—in this latter point, uniformity might exist both at common law and chancery. Again, might not all the public officers be paid by salary only, and let the suitor pay a limited and certain fee upon one or two of the leading steps in a suit or action? You have the power of doing much towards such improvements, as your work is much looked up to by our profession, especially since you made the alteration a few months ago in the mode of conducting it.

A CONSTANT READER.

NEW ECCLESIASTICAL COMMISSION.

THE following is the substance of the New Commission for inquiring into the state of the present bishoprics, with a view to separating some of them and establishing four new ones.

"Whereas, with a view to the better spiritual care of our subjects in England and Wales, it is our intention that a measure should be submitted to parliament for continuing the bishoprics of Saint *Asaph* and *Bangor* as separate bishoprics, and for establishing forthwith a bishopric of *Manchester*, and also, as soon as

conveniently may be, three other bishoprics; and to that end we deem it expedient that full and attentive consideration should first be given to the state of the several bishoprics in England and Wales, as hereinafter more particularly set forth:—

"Know ye, therefore, that we have authorized and appointed, and do by these presents authorize and appoint William Archbishop of Canterbury, Charles Christopher Baron Cottemham, Edward Archbishop of York, Henry Marquis of Lansdowne, Henry Thomas Earl of Chichester, Edward Earl of Powis, John Russell (commonly called Lord John Russell), Charles James Bishop of London, Edward Bishop of Durham, Charles Richard Bishop of Winchester, John Bishop of Lincoln, John Bird Bishop of Chester, Sir George Grey, and Sir Charles Wood, or any three or more of you, to consider the state of the several bishoprics in England and Wales, and of the several dioceses as now subsisting, or as proposed to be newly arranged by and under the provisions of 6 & 7 Wm. 4, intituled "An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage," with special reference to the extent and boundaries of the said dioceses respectively, and the number of benefices, and the amount of population within the same:

"And to devise and suggest the most convenient and advantageous position of such other additional bishoprics respectively, and the names thereof, and the proper extent and boundaries of the dioceses thereof, and how, and when, and in what order, and subject to what conditions and regulations such additional bishoprics should be established:

"And also, whether any and *what alterations* may *advantageously* be made in the *extent and boundaries of the several dioceses in England and Wales as now subsisting*, or proposed to be newly arranged by and under the provisions of the said recited act; and also to consider and suggest what amount of income out of any property or revenues now or hereafter in the hands or at the disposal of the Ecclesiastical Commissioners for England, applicable to Episcopal purposes, it would be proper to assign to the Bishop of Manchester, and to the bishops of the other additional bishoprics respectively, regard being had to the circumstance that we do not contemplate the issuing of our writ to such new bishops to sit and vote as *Peers of Parliament*, except as vacancies shall from time to time occur among the number of bishops of England and Wales now so sitting and voting:

"And further, to consider and suggest whether, by reason of any suggestions relating to the premises which may be offered by you, it appears to be advisable to make any and *what alteration*, either temporary or permanent, in the *amount already assigned*, or intended to be as-

signed by or under the provisions of the said recited act of his late Majesty, as the income of any of the bishops of the existing sees of England and Wales."

The usual powers are conferred for summoning witnesses and compelling the production of papers.

10th February, 1847.

SELECTIONS FROM CORRESPONDENCE.

THE ATTORNEY'S ANNUAL CERTIFICATE DUTY.

To the Editor of the Legal Observer.

SIR,—Another year has gone by—another certificate duty has been paid, and yet but little or no progress has been made in obtaining the repeal of that unjust and oppressive tax—unjust as it is a tax exclusively imposed on one profession, and more, only on a part and the least wealthy part of a profession, and oppressive as it taxes equally the man with a large practice whose profits can easily bear the call, and the young beginner striving to gain a livelihood without having recourse to the sharp practising and dishonest means which are too often resorted to by some members of our profession. How is it that although it is now admitted, that the certificate tax is unjust and oppressive, all arguments in its favour having been refuted, that it still exists, and that the members of the Law Institution have not more exerted themselves to obtain its repeal? The only answers that I can imagine are,—that no Chancellor of the Exchequer will abolish a tax so easily levied and so remunerative unless forced to do so, and that the members of the Law Institution being mostly older members of the profession and in large practice, have not the time or energy, or reasons to induce them to use every exertion to obtain its repeal, and the payment of the duty being to them a mere trifle, not considering the oppressive nature of it on the younger members of the profession. Why is not, there-

fore, a meeting of the whole of the profession called to consider the best means of acting and of *agitating* until we obtain the repeal of this tax? and why should not the committee of the Law Institution call such a meeting? surely they are the proper parties to do so. Only let the profession use its just influence and power, be energetic and active, and before another year has passed over our heads, I feel assured that we shall have no longer to complain of this grievance.

A YOUNG PRACTITIONER.

CHITTY'S ARCHBOLD'S QUEEN'S BENCH PRACTICE AND THE FORMS.—JARMAN'S CONVEYANCING BY SWEET.—LAW REPORTS.

To the Editor of the Legal Observer.

SIR,—The unnecessary delay which now so frequently occurs in the completion of law books published in parts, is the subject of general complaint in the profession; and the inconvenience to us is the greater, inasmuch as a book which is so published generally occupies the position of a standard work.

Editors and publishers would doubtless prefer publication being deferred until the completion of their labours; and in bringing out a portion only in the first instance are actuated by a desire to accommodate the profession: but what we blame them for is unreasonable delay. This is particularly chargeable against those concerned in the completion of the works at the head of this letter. The first volume of the new edition of the Practice was published upwards of a year ago; and it was stated in the advertisement, that the second volume was then in a forward state; the appearance, however of the second volume, and of the remainder of the Forms, is now almost despaired of. The promises of Mr. Sweet also (even allowing for the recent changes in property law) have been long due.

The standard Law Reports are not exempt from the charge.

G. W.

CANDIDATES PASSED AT THE EXAMINATION.

Hilary Term, 1847.

Names of Candidates.

To whom Articled, Assigned, &c.

Bateman, Richard . . .	Arthur John Knapp, Bristol
Beddoe, Henry Child . . .	George Masefield, Ledbury
Bell, William, jun. . . .	Henry Hill, 4, Verulam Buildings
Borlase, John James . . .	Glynn Grylls, Helston
Bristow, Ebenezer John . .	John Stogdon, Exeter
Burton, Joseph, jun. . . .	Frederick Talbot, 47, Bedford Row
Byam, William Henry . . .	Richard John Bridges, Bristol
Carpenter, Alfred Benjamin .	Richard Baynes Armstrong, 8, Staple Inn
Chorlton, John Higginbottom	Samuel Chorlton, Runcorn
Cockram, George Woodbury .	John Loosmore, Tiverton—Thomas Leigh Teale Rendell, Tiverton

* The 2nd vol. of Archbold's Practice and the 2nd Part of the Forms are just published.—ED.

Collins, Nathaniel Kyrle	John Stratford Collins, Ross
Cook, Robert	Francis Stanier, Newcastle-under-Lyme — William Augustus Sadler Pemberton, 4, Symond's Inn
Copeman, Thomas	Robert William Parmeter, Aylsham
Coyte, James	John Crabtree, Halesworth
Cursham, William George	William Cursham, and Hugh Bruce Campbell, Nottingham.
Cutts, John, jun.	John Cutts, sen., Chesterfield
Dennis, Thomas John	Thomas Hooper Law, Barnstaple
Drake, Thomas Edward, jun.	Thomas Edward Drake, Exeter
Eastwood, Abraham Greenwood	William Eastwood, Todmorden
Edmonds, Charles Henry	William Sim, 8, King's Bench Walk, Temple
Edmonds, Robert Gard	John Edmonds, Plymouth
Edwards, Edmund Butler	Alexander Edwards, Pontypool
Fear, Ezekiel Evans	John Garland, Dorchester
Fisher, Charles Hawkins	Robert Fuller Graham, Newbury
Freston, William Antony	Charles Lawrence, Cirencester
Fryer, James Joseph	William Napier Dibb, York—James Richardson, York
Girling, Nathaniel	Thomas Edward Wallace, Diss
Green, Robert Yeoman	Armorer Donkin, Newcastle-upon-Tyne
Heylin, Richard Featherstonhaugh	William Maychell, Penrith
Hitch, John Wortham Arnott	William Richard Sumpter, Cambridge
Holmes, Whitaker	William Pritt, Liverpool—Thomas Chauntler, Gray's Inn Sqr.
Howard, Alfred George	Thomas Rhodes, 9, Davies Street, Berkeley Square — John Bishop, 14, Lincoln's Inn Fields
Ingram, Frederick	Francis Ingram, Dorchester
James, John Crymes	Morgan Rice James, Haverfordwest
Johuson, Frederick Augustus	James Plucknett, 17, Lincoln's Inn Fields.
Jones, Hugh	William Lloyd Roberts, Carnarvon
Jones, William	Philip Griffith Jones, Carmarthen
King, John Algernon	John Poore King, Grantham—Edward Willan, Bedford Row
Lawrance, John William	William Lawrance, Peterborough
Leakey, James Shirley	James Whitton Arundell, late of 3, South Square — Herbert Menda Gibson, Plymouth
Lewis, Charles Edward	Henry Compigne, 24, Bucklersbury
Lock, Henry	Thomas Hooper Law, Barnstaple
Lovegrove, Joseph	John Lovegrove, Gloucester
Marsland, George, jun.	Henry Hicks, Shrewsbury
Mayhew, John	Joseph Jessopp, Waltham Abbey
Oldham, Edwin	William Woollam, Stockport
Orford, John	Simon Batley Jackaman, Ipswich
Partridge, Joseph Arthur	George Edwards, Stroud
Pemberton, Stephen John	Thomas Johnson, late of Hexham—Richard Gibson, Hexham
Percival, Arthur	Thomas Hippisley Jackson, Stamford
Philby, Henry Adams	Henry Aston, 2, New Broad Street
Phillips, John	John Saul, Carlisle
Platt, Edward John	Theod Pearce, jun., Bedford
Poole, Henry Davis	Robert Henry Sawyer, Staple Inn
Porter, George Twynam	George Twynam, Winchester
Read, James, jun.	James Read, sen., Mildenhall
Richardson, Henry Marriott	James Winder, Bolton-le-Moors
Richardson, Martin, jun.	Martin Richardson, sen., Harrogate, York
Rogers, Edw. John Boulderson	William Paul, Truro—Philip Prothero Smith, Truro
Saxby, Richard	Stephen Walters, 36, Basinghall Street
Seaman, Frederick William	Thomas Baker Cox, Poultry — Nathaniel Cobham, Ware
Selwyn, Frederick Michael	Robert Leeson, Nottingham—William Fowler, Huntingdon
Sherwood, Frederick	George Vincent, 9, King's Bench Walk, Temple
Smith, James	Thomas Grueber, 5, Billiter Street
Snell, William Henry	John Stogdon, Exeter
Stone, Joseph	James Oldham Swettenham, Belper
Underwood, Hugh Frederick	Richard Underwood, Hereford
Waddington, John Jarvis	Alexander Waddington, Usk
Wallace, John	John Law, Manchester
Ward, Alfred	William Williams, 31, Alfred Place, Bedford Square
Westhorp, Sterling	Charles Steward, Ipswich
Willing, William, jun.	Joshua John Peele, Shrewsbury
Williams, George	William Williams, 31, Alfred Place

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Common Law.

REGISTRATION OF VOTERS.

ABODE OF VOTER.

1. *Travelling abroad*.—In a list of voters for a county, a voter was described in the column headed "Place of Abode," "as travelling abroad." *Held*, a sufficient description. *Walker v. Payne*, 2 C. B. 12.

2. An objection to the sufficiency of the description of a voter's place of abode, described as "The Grove, Neasdon, in this parish," Neasdon being in the parish mentioned in the heading of that part of the registrar, was abandoned. *Wood v. Overseers of Willesden*, 2 C. B. 15.

3. *Power of barrister to amend*.—*Held*, that where a voter's place of abode is untruly stated in the list, the barrister has power to insert it correctly, under the 6 & 7 Vict. c. 18, s. 40.

And *semble*, (per *Maule, J.*), that the place of abode is no part of the qualification. *Luckett v. Knowles*, 2 C. B. 187.

ABODE OF OBJECTOR.

1. 6 & 7 Vict. c. 18, s. 7, *Schedule A*, No. 5. — In a notice of objection, the objector described himself as of "No. 398, High Street, Cheltenham, on the register of voters for the parish of Cirencester." On the register so referred to, the objector was described as of "Cheltenham" only: *Held*, that the notice was sufficient. *Pruen v. Cox*, 2 C. B. 1.

2. A notice of objection, pursuant to the 6 & 7 Vict. c. 18, s. 17, *schedule (B)*, Nos. 10, 11, signed by the objector with the addition of his true place of abode, is sufficient, notwithstanding it differs from that erroneously placed against his name in the list of voters. Per *Tindal, C. J.*, and *Coltman and Erle, JJ.*, dissentient, *Maule, J.* *Knowles v. Brooking*, 2 C. B. 226.

3. *C. A.*, on the list of voters for the parish of Fisherton Auger, was described in the list as residing in "Fisherton St.;" in a notice of objection he described himself as "*C. A.*, of the parish of Fisherton Auger, on the list of voters for the said parish of Fisherton Auger." There was no other person of that name upon the list of voters for Fisherton Auger: *Held*, that the notice was sufficient. *Wills v. Adey*, 2 C. B. 246.

ACTUAL POSSESSION.

Rent-charge.—*Seisin in law*.—The words "actual possession," in the 2 W. 4, c. 45, s. 26, mean a possession in *fact*, as contradistinguished from a possession in *law*.

Therefore, a grantee of a rent-charge is not entitled to be registered, unless he has been in the *actual* receipt of it for six months before the last day of July. *Murray v. Thorniley*, 2 C. B. 217.

AMENDMENT.

See *Abode of Voter*, 3.

COSTS.

The court will not give costs upon an appeal, though only one side is heard, where a question of law, the fair subject of a doubt, is involved. *Croucher v. Broune*, 2 C. B. 97.

CLAIM TO BE RATED.

Rate for time being.—A rate is not a complete and valid rate until allowance and publication. A rate was made on the 28th of Sept., 1844, and purported to be made "for thirteen weeks, from the 16th of Sept. to the 16th of Dec." A new rate was made on the 23rd of Dec. 1844, allowed on the 3rd of Jan. 1845, and published on the 5th: *Held*, that a claim under the 2 W. 4, c. 45, s. 30, made on the 27th Dec. to be put upon "the rate for the time being," was a claim to be put on the rate made in Sept. *Bushell v. Luckett*, 2 C. B. 111.

CLAIM TO VOTE.

See *Notice*.

DESCRIPTION OF PROPERTY.

1. A party whose name appeared on the register for a county, was objected to on the ground, that the property was not sufficiently described therein for the purpose of being identified. The barrister having decided that the description was sufficient, the court declined to interfere. *Wood v. Overseers of Willesden*, 2 C. B. 15.

2. *Part of a house*.—"Part of a house" is a sufficient statement of the qualification of a borough voter under the 2 W. 4, c. 45, s. 27. *Judson v. Luckett*, 2 C. B. 197.

3. *Houses*.—In a notice of claim to be inserted in a list of voters for a city or borough, pursuant to the 6 & 7 Vict. c. 18, s. 15, *schedule (B)*, No. 6, it is enough to describe the *nature of the qualification* in the 3rd column of the form as "house," notwithstanding the qualification in reality consists in the occupation of two houses in immediate succession, provided the whole qualification is accurately described in the 4th column. And *semble*, that at all events, the misdescription, if any, is amendable under s. 40. *Hitchins v. Brown*, 2 C. B. 25.

See *Notice; Rates*, 1.

EQUITABLE INTEREST.

See *Inmate of Hospital*.

FREEMEN OF LONDON.

Freemen and liverymen of London admitted freemen by purchase since the 1st of March, 1831, are entitled to be registered, notwithstanding the proviso in the 2 W. 4, c. 45, s. 32; such proviso applying not to liverymen of the city of London, but to freemen and burgesses of other cities and boroughs. *Croucher v. Broune*, 2 C. B. 97.

HOUSES.

See *Description of Property*, 2.

INMATE OF HOSPITAL.

Equitable interest.—Apportionment of rent.—

The inmates of an hospital in the county of York, founded and endowed by the Duke of N., in 1673, claimed to be registered for the county of Nottingham. It appeared that the revenues of the hospital were derived from lands, and corn-rents in lieu of tithes of lands, in Yorkshire and Nottinghamshire, which were vested in trustees: that the whole formed one fund, out of which the trustees paid a weekly stipend to each inmate; that, originally, each inmate received 2s. 6d. a week, and a certain yearly allowance of coals and clothing; but that the weekly payments had subsequently been increased to 10s.; that by one of the constitutions of the charity, it was provided, that if at the end of any year there should be found in the treasury of the hospitals above 100*l.*, the surplus should be divided amongst the pensioners; and that the appointment was for life, no instance of dismissal being known.

By an act of parliament modifying the constitution of the charity, it was provided, that instead of having the surplus revenues distributable amongst the original number of pensioners, additional pensioners should be chosen; and the trustees, under the direction of the duke, were empowered and directed, from time to time, to add as many more pensioners as the revenues of the hospital would allow, (leaving a sufficient surplus for repairs and incidental expenses); and the trustees were, under the directions of the duke, to pay the pensioners *such fixed stipends as they should think fit, (having regard to the revenues of the hospital,) and to lessen or increase, vary, change, and alter such weekly stipends, as they should find requisite, so that the stipends should at no time be reduced below 3s. 6d. a week.*

The revising barrister having held, that the inmates had no legal or equitable interest in the funds of the hospital to a sufficient amount to entitle them to be registered, assuming that they had no absolute right to more than 3s. 6d. per week, the court affirmed his decision.

And held, that the rents derived from the two counties might be apportioned. *Ashmore v. Lees*, 2 C. B. 31.

MULTIPLYING VOTES.

1. A conveyance of land by one vendor to several vendees for a *bonâ fide* consideration, is valid, although the avowed object of the vendor is to multiply, and that of the vendees to acquire, the right of voting. *Alexander v. Newman*, 2 C. B. 122.

Case cited in the judgment: *Onslow v. The Bailiff of the Borough of Halsemere*, Lord Somers's Tracts, vol. 8, p. 275.

2. A conveyance made to carry into effect a real *bonâ fide* contract of sale, where the purchase money is paid, and the possession taken, without any secret reservation or trust whatever for the benefit of the sellers, is not within the 7 & 8 W. 3, c. 25, s. 7, notwithstanding it is made with a view to the multiplying of votes or

the splitting of freeholds; the intention of the statute being, to avoid such conveyances only, made with that view, as are in themselves fraudulent and collusive. *Riley v. Crossley*, 2 C. B. 146.

3. A conveyance of land by one vendor to several vendees for a *bonâ fide* consideration, is valid, although the avowed object of the vendor is to multiply, and that of the vendees to acquire, the right of voting. *Beswick v. Ashworth*, 2 C. B. 152; *Beswick v. Aked*, 2 C. B. 156; *Rawlins v. Bremner*, 2 C. B. 166.

4. A conveyance made for a *bonâ fide* consideration, in trust as to one-tenth, for the grantor himself, and as to the other nine-tenths, for certain other parties, who amongst themselves contributed nine-tenths of the purchase-money, is not within the 7 & 8 W. 3, c. 25, s. 7, notwithstanding the avowed object of the grantor is to multiply, and of the other parties to acquire, the right of voting. *Thorniley v. Aspland*, 2 C. B. 160.

5. A deed of gift *bonâ fide* executed by a father to his sons, expressed to be in consideration of natural love and affection, is not within the 7 & 8 W. 3, c. 25, s. 7, although the avowed object of the father was to confer votes upon his sons. *Newton v. Hargreaves*, 2 C. B. 163.

6. A *bonâ fide* grant of a rent-charge by a father to his son expressed to be in consideration of natural love and affection, is not within the 7 & 8 W. 3, c. 25, s. 7, though the intention of the grantor be to create a vote. Whether or not there is fraud in the making of a grant, is a question of fact which must, in all cases, be decided by the revising barrister: the court will not infer fraud. *Newton v. Overseers of Mobberley*, 2 C. B. 203.

7. A *bonâ fide* grant of a rent-charge by a man to his son and his son and his son-in-law, expressed to be made for a nominal consideration only, is not within the 7 & 8 W. 3, c. 25, s. 7, though all the parties contemplated the creation of votes. *Newton v. Overseers of Crowley*, 2 C. B. 207.

And see *Splitting Act*.

NOTICE OF CLAIM.

Houses in succession.—Where a voter's qualification appears in the list to consist of a successive occupation of houses, the numbers of each, if each has a number, must be stated.

And, *semble*, (per *Erle, J.*) that, if the omission of the number be supplied to the revising barristers pending the revision, he is bound to amend the description, under the 6 & 7 Vict. c. 18, s. 40. *Flounders v. Donner*, 2 C. B. 63.

NOTICE OF OBJECTION.

Where several lists of voters.—A notice of objection delivered to the overseers under the 6 & 7 Vict. c. 18, s. 17, sched. (B.), No. 10, where there are more lists than one made out by the overseers, must specify the particular list to which the objection refers. *Barton v. Ashley*, 2 C. B. 4.

NOTICE OF APPEAL.

1. The court cannot entertain an appeal in the absence of the respondent, unless there be an affidavit of service upon him of notice of the appellant's intention to prosecute the appeal under the 6 & 7 Vict. c. 18, s. 64. *Coltrill v. Lewis*, 2 C. B. 60.

2. A waiver by the respondent of the notice to him required by the 6 & 7 Vict. c. 18, s. 64, will not enable the court to entertain the appeal in his absence. *Newton v. Overseers of Moberley*, 2 C. B. 203.

NOTICE ON SUNDAY.

Stat. 29 Car. 2, c. 7, s. 6.—A notice of objection sent by post, so that it would in the ordinary course of the post be delivered on a Sunday, is nevertheless well served. *Colvill v. Lewis*, 2 C. B. 60.

NOTICE BY POST.

1. *Evidence of delivery.*—Sending a notice of objection to the party objected to by the post, pursuant to the directions of the 6 & 7 Vict. c. 18, s. 100, is a sufficient substitute for giving the notice to the party, or leaving it at his place of abode, as required by s. 7.

Where, therefore, a notice was posted, under s. 100, in sufficient time to reach the party, according to the ordinary course of post, on the 25th of August: *Held*, that such service was sufficient, notwithstanding that the actual delivery was accidentally delayed until the 27th.

And, *held*, that the provisions of s. 100, are equally applicable to notices to overseers directed to their usual places of abode, as provided by s. 101. *Bishop v. Helps*, 2 C. B. 45.

2. *Evidence of delivery.*—The production of a stamped duplicate notice of claim, duly delivered to the post-master, and duly directed to the overseers, pursuant to the 6 & 7 Vict. c. 18, ss. 100, 101, is sufficient evidence of the notice of claim having been given to the overseers at the place mentioned in such duplicate, on the day on which such notice would, in the ordinary course of post, have been delivered at such place, notwithstanding its actual delivery to the overseer is delayed until after the time limited by the act, in consequence of pressure of business at the post-office. *Bayley v. Overseers of Nantwich*, 2 C. B. 118.

3. Where a notice was posted, under s. 100, in sufficient time to have reached the party according to the ordinary course of post, on the 25th of August: *Held*, that such service was sufficient to call upon the party to prove his qualification, notwithstanding that the actual delivery was accidentally delayed until the 27th.

4. The provisions of s. 100 are equally applicable to notices to overseers, directed, as provided by s. 101, to their usual places of abode. *Hickton v. Antrobus*, 2 C. B. 82.

5. *Waiver.*—*Semble*, that, where the respondent appears, he is precluded from objecting to the form of the service of the notice of appeal required by ss. 62, 64. *Rawlins v. Overseers of W. Derby*, 2 C. B. 72.

See *Abode*.

OBJECTOR'S ABODE.

See *Abode of Objector*.

OCCUPATION AS TENANTS.

Six persons were joint lessees of a house, which they and others used for the purposes of a political association. The rent and the wages of the servants who had charge of the premises were paid out of a common fund, to which the lessees and the other members of the association were subscribers. Various members of the association transacted the business of the association upon the premises; and the lessors, when in London, frequented the premises, partly transacting the business of the association, and partly transacting their own affairs.

The revising barrister having decided, upon these facts, that the lessees occupied the premises as tenants within the 2 W. 4, c. 45, s. 27; and that the same were not jointly occupied by them and the other members of the association as tenants; the court affirmed his decision. *Luckett v. Bright*, 2 C. B. 193.

PROPERTY.

See *Description of Property*.

RATES.

1. *Inaccurate description of house.* *A.* was rated as the occupier of a house, No. 3, Golden Lane, but by mistake inaccurately described as No. 4: the rates were paid, under an agreement, by the landlord; and *A.* had paid all his rent. *Semble*, that this was not an "accurate description of the premises," within the 6 & 7 Vict. c. 18, s. 75; but a sufficient rating of *A.* within the 2 W. 4, c. 45, s. 27.

And, *held*, that the insertion of *A.* in the rate was a *bona fide* calling upon him to pay, and the payment by the landlord a *bona fide* payment by *A.*, within the former statute. *Cook v. Luckett*, 2 C. B. 168.

Case cited in the judgment: *Hughes v. Overseers of Chatham*, 5 M. & G. 54; 7 Scott, N. R. 581.

2. *Tender.*—*A.* claimed, under the 2 W. 4, c. 45, s. 30, to be rated in respect of premises occupied by him, and asked the overseers whether there were any rates due; the overseer saying that he did not know; *A.* added—"If there are, I am prepared to pay them;" but he did not produce or offer money: the overseer answered, "I'll see to it," and *A.* went away, and made no further inquiry on the subject: *Held*, not a sufficient tender to entitle *A.* to the benefit of that section. *Bishop v. Smedley*, 2 C. B. 90.

See *Claim to be rated*.

3. *Form of rate.*—In consequence of a claim made by *A.*, an occupying tenant, his name was inserted in a rate, immediately after that of his landlord, who was duly rated in respect of the same premises. All the columns opposite *A.*'s name were left blank, and it was no otherwise connected with that of his landlord than by its juxtaposition. *Held*, that *A.* was sufficiently rated. *Judson v. Luckett*, 2 C. B. 197.

4. In consequence of a claim made by *A.*, an occupying tenant, his name was inserted in a rate, immediately after that of his landlord, who was duly rated in respect of the same premises. All the columns opposite *A.*'s name were left blank, and it was not otherwise connected with that of his landlord than by its juxta-position: *Held*, that *A.* was sufficiently rated.

And *held*, that the revising barrister ought not to have been influenced by a statement of one of the overseers, that *A.*'s name was so inserted without any intention to rate him; but should have decided upon the construction of the rate itself, irrespectively of any extraneous evidence. *Pariente v. Luckett*, 2 C. B. 177.

RENT APPORTIONMENT.

See *Inmate of Hospital*.

RENT-CHARGE.

See *Actual Possession*.

SPLITTING ACT.

7 & 8 W. 3, c. 25, s. 7.—*Knowledge of object of conveyance by solicitor of vendor*.—A conveyance from one vendor to several persons, who purchase with the intention of obtaining and multiplying voters by splitting and dividing the interest, the vendor not being cognizant of such purpose, is valid. Nor is such conveyance brought within the 7 & 8 W. 3, c. 25, s. 7, by the mere knowledge, on the part of the vendor's solicitor or agent, of the object of the purchasers. *Hoyland v. Bremner*, 2 C. B. 84.

SUNDAY.

Service of notice of claim.—When the 20th of July falls upon a Sunday, service of a notice of claim under the 6 & 7 Vict. c. 18, s. 4, by leaving it at his place of abode on that day, is good service. *Rawlins v. Overseers of W. Derby*, 2 C. B. 72.

TENANTS.

See *Occupation*.

VOTERS.

See *Abode of Voters; Multiplying Voters*.

YEARLY VALUE.

1. *Question of fact*.—"The clear yearly value" of premises, under the 2 W. 4, c. 45, s. 27, is matter of fact to be determined by the revising barrister upon the evidence before him.

The proper criterion of value seems to be the amount for which the premises would fairly let, the tenant having the ordinary burthens incident to the occupation. *Coogan v. Luckett*, 2 C. B. 182.

2. The proper criterion of "clear yearly value," within the 2 W. 4, c. 45, s. 27, is the fair annual rent, without making and deduction on account of repairs or insurance. *Colvill v. Wood*, 2 C. B. 211.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Coombes v. Ramsay, (S. C. *Coombes v. Warwick*.)

APPEAL IN AMENDMENTS UNDER THE NEW ORDERS.

The Lord Chancellor will not hear appeals from the Master's office in the matter of amendments under the new orders.

AFTER the dismissal of an appeal in this case, as reported *ante*, p. 164, the parties again proceeded before the Master for leave to amend on further affidavits, but not obtaining such leave, the present application was made.

Mr. Cooper and Mr. Miller submitted that, as under the Act, 3 & 4 W. 4, c. 94, only one appeal from the Master was allowed in these matters, and as the act expressed that such appeal might be made to the Lord Chancellor, or the Master of the Rolls, or to the Vice-Chancellor, it was quite regular to come to this court, if the parties preferred it; but

The Lord Chancellor decided that this was in the nature of an original application which his lordship had determined not to take. There was no doubt that he had jurisdiction to entertain it, but having authority under the Vice-Chancellors' Acts to transfer original causes to those judges, the appeal must be made to one of them.*

Rolls Court.

Potts v. Whetmore. Jan. 22 & 28, 1847.

AMENDMENT OF BILL.—68TH ORDER OF MAY, 1845.

An order for amending the bill obtained ex parte from the court in the first instance, held irregular, though, under the circumstances of the case, the exigences of the 68th Order of May, 1845, could not be complied with.

THIS was a motion to discharge an order to amend, obtained the 7th of Nov. 1846, for irregularity on the following grounds:—That the application was made to the court, instead of to the Master, and that it was not supported by such an affidavit as the 68th Order of May, 1845, requires. It appeared that the answer was filed on the 5th of May last, and not being excepted to, it was deemed sufficient on the 16th of June, and the time for amendment consequently expired four weeks after that time. The order had been obtained *ex parte*, but upon an affidavit stating these facts. The cause was a pauper cause, and the delay was stated to have arisen from an erroneous supposition of the solicitor appointed on the part of the plaintiff, that the order appointing him solicitor ceased to operate when the answer was put in.

* The subsequent proceedings in this cause are reported *ante*, p. 303.

Mr. Teed and Mr. Blount for the motion.

Mr. Turner, contra, contended, that the order was not irregular, because, under the circumstances, it would be impossible to satisfy the exigencies of the 68th Order of May, 1845, while the Master had no power to relax that order, which the court, under the 19th Order, or in virtue of its general jurisdiction, undoubtedly had.

Lord Langdale, after stating the facts of the case, observed that the court had on different occasions made orders to amend, notwithstanding the directions contained in the 2 & 3 W. 4, c. 94, ss. 13, 14, if the occasion seemed to require it. It had, however been decided that, under the present orders, the time within which application might be made to the Master for an order to amend was not limited. *Christ's Hospital v. Grainger*, 1 Phil. 634; *Coombe v. Ramsay*, 1 Phil. 168. Therefore, *prima facie*, this application ought to have been made to the Master, and not having been so made, he thought the order was irregular, and must be discharged. The motion asked, also, that the bill might be dismissed for want of prosecution, but this his lordship refused.

Vice-Chancellor of England.

Cooper v. Webb. Dec. 23, 1846, and Jan. 12, 1847.

JOINT-STOCK COMPANIES.—DEMURRER.—PARTIES.

A bill by one member of a joint-stock company, on behalf of himself and the other shareholders, seeking to protect a common fund belonging to the company, but not praying for a dissolution, is not demurrable for want of parties, because all the other shareholders are not before the court.

THE bill in this case was filed by the plaintiff on behalf of himself and all other shareholders in a company formed for making a railway from York to Lancaster, and called The York and Lancaster Railway Company; and it prayed, amongst other things, that an account might be taken of all monies received by the defendants on behalf of the company, and of their application thereof, and also an account of all costs, charges, and expenses which had been properly incurred, paid, or sustained by the defendants as the managing committee of the company; and that the plaintiff and the other shareholders on whose behalf he sued might be declared liable to contribute such proportion of the amount of the said expenses as the number of shares held by the plaintiff and such other persons bore to the whole number of shares into which the capital of the company was proposed to be divided, or such other proportion of the expenses as the court should, under the circumstances, declare to be just.

To this bill a general demurrer was put in for want of equity and want of parties, but it was principally on the latter ground that the demurrer was argued.

Mr. Stuart, Mr. Bessell, and Mr. Welford, in support of the demurrer, said, that the bill proposed to render the plaintiff and his class liable to contribution; and yet the class of shareholders was not before the court. The allegation in the bill was, that they were so numerous that they could not, without inconvenience, be parties, and yet the plaintiff offered, on behalf of himself and the other shareholders, to make such contribution as might be necessary for satisfying the expenses of the company. The bill also charged that an account ought to be taken of all monies received by the defendants on account of the company, and that a rateable distribution should be made on behalf of the plaintiff and all other parties on whose behalf he sued. Now, if a party sued on behalf of a body, he could sue to bring back something which belonged to the copartnership, and which had been abstracted from it, or, in other words, to protect the common fund, but he could not affect the rights of absent parties. Here, too, it was plain the partnership was at an end, and as soon as a partnership became extinct each party acquired a distinct conflicting interest, but while the partnership subsisted the partners might be represented by one common head. They cited *Long v. Yonge*, 2 Sim. 269; *Richardson v. Hastings*, 7 Beav. 301; *Evans v. Stokes*, 1 Keen. 24; *Richardson v. Larpent*, 2 Y. & C. 507; *Hichens v. Congreve*, 4 Russ. 562; *Deeks v. Stanhope*, 14 Sim. 57.

Mr. James Parker and Mr. Speed, contra, urged that the bill alleged that the interests of all the shareholders, except the defendant, were identical, and that none of them were adverse. The frame of the bill was precisely similar to that in *Apperley v. Page*, 10 Jur., decided by Vice-Chancellor Bruce, and in which case the demurrer, upon precisely similar grounds, was overruled. They cited, also, *Walworth v. Holt*, 4 Myl. & Cr. 619.

The Vice-Chancellor said, there was a material difference between asking a party to pay, and withholding what was due. He would give his judgment after looking into the case of *Apperley v. Page*.

Jan. 12th. His Honour this morning delivered judgment, and said, that he had looked over the case of *Apperley v. Page*, and allowing for the different circumstances in that case, he found that the bill in this cause was framed exactly in accordance with the bill in *Apperley v. Page*, and he considered himself bound by the decision in that case. Besides which he entirely concurred in the opinion expressed by Vice-Chancellor Bruce. The demurrer must therefore be overruled.

Vice-Chancellor Knight Bruce.

Coombe v. Chapman. 23rd Jan. 1847.

PRACTICE.

Conveyance by infant will be ordered without a reference where the real estate is sold under a decree of the court.

Shapter supported a petition on behalf of a purchaser, under the statute 11 Geo. 4, and 1 W. 4, c. 47, praying that an infant devisee

might be ordered to convey. The suit was one instituted for the administration of the estate of a testator who had devised a freehold property to the infant. The personal estate was deficient, and the freehold estate was sold under a decree of the court to the petitioner who had paid his purchase money into court.

The order was made, the court observing that no inquiry was needed in such a case.

Queen's Bench.

(Before the Four Judges.)

The Queen v. The East Lancashire Railway Company. Hilary Term, 1847.

PRACTICE.—AFFIDAVITS.

The general rule of practice is, that if a party applying to the court fails from the incompleteness of his affidavits, he cannot be allowed to make a fresh application on affidavits supplying the defect. But where the proceedings on the first rule were rendered void and of no effect by reason of an error committed, either by the counsel in indorsing his brief, or by the officer of the court in drawing up the rule, the court (Lord Denman dubitante) permitted a second application to be made.

Mr. Archbold had obtained a rule nisi for a mandamus to the directors of the East Lancashire Railway Company to compel them to summon a jury for the purpose of awarding compensation to A. B. for a portion of his land taken by the railway. It was afterwards discovered, that in consequence of an error in the indorsement on the brief, the rule was informally drawn up, and a motion was made to amend the rule, but the court refused the application. The rule, therefore, being found insufficient for the purpose it was intended, was abandoned. A rule nisi for the same purpose and upon the same materials was subsequently obtained.

Mr. Baines and Mr. Gray showed cause, and contended that this was a second application to the court for a mandamus on precisely the same materials as those on which the former application was made, and that, therefore, it came within the rule laid down by the court in *Regina v. The Manchester and Leeds Railway Company*,* and acted on in several cases since, that if a party applying to the court fails from the incompleteness of his affidavits, he cannot be allowed to make a fresh application on affidavits supplying the defect.

Mr. Martin and Mr. Archbold, contra, contended, that this case did not come within the rule of practice which had been cited, because the former rule was abandoned, not in consequence of the incompleteness of the affidavits, but in consequence of an error which had been committed in drawing up the rule, and the court being of opinion that they could not amend the defect, the former proceeding became useless to the party applying.

Lord Denman, C. J. This rule must be made absolute. My Brothers take a more

liberal view of this matter than I do. I confess that I am opposed to relaxing rules of this sort, the object of which is to save unnecessary litigation and expense.

Mr. Justice Patteson. I am not disposed to relax any rule which can maintain regularity and prevent expense, but I think that there is a difference between a case where the renewed application is founded on different materials, and one which has been rendered necessary by a mere mistake of form in the first application, a mistake which may have arisen as well from the officer as from the counsel or party in the cause.

Coleridge and Wightman, J.'s, concurred.

Rule absolute on payment of costs.

Queen's Bench Practice Court.

Alcock v. Sutcliffe. Hil. Term, Jan. 29, 1847.

WARRANT OF ATTORNEY, PRACTICE IN SIGNING JUDGMENT ON.—LACHES.

Where a warrant of attorney authorizes judgment to be entered up "as of the term last past, then next, or any subsequent term," a judgment entered up in vacation is regular (over-ruling Colbold v. Chilver, 4 Scott, New Rep. 678.) The assignees of a bankrupt seeking to take advantage of an irregularity in a judgment signed against the bankrupt, have only the same time within which to take advantage of it after their appointment, as the bankrupt himself would have, viz., from the time he "had" notice of the irregularity, so must apply promptly.

THIS was a rule obtained by Addison, calling on the plaintiff to show cause why the judgment signed hereon and all subsequent proceedings should not be set aside. It appeared, that on the 28th of May, 1842. James Sutcliffe, the defendant, executed a warrant of attorney to the plaintiff and two other persons, authorising certain attorneys of the various courts of common law at Westminster and the County Palatine of Lancaster to appear for him, the defendant, in any of the said courts, "as of Easter Term last past, Trinity Term then next, or any subsequent term, or in the Court of Common Pleas at Lancaster at the then next or any subsequent assizes to be held for the said County Palatine of Lancaster, to receive a declaration in an action of debt for 9,820*l.*, or any less sum, at the suit of the parties above mentioned; and thereupon to confess action or suffer judgment by *nil dicit* or otherwise to pass against him to be thereupon entered up against him of record in the said court." On the 27th of Nov., 1846, leave to sign judgment was obtained by an order of Patteson, J., and judgment signed upon the warrant of attorney the next day, and a *fi. fa.* issued. On the 1st of Dec. a levy was made on the defendant's goods, the sheriff took possession, and the same day transferred the property to the plaintiff by a bill of sale. On the 3rd the defendant purposely committed an act of bankruptcy; and on the 8th a fiat issued; on the 11th there was an adjudication, and the

official assignee was appointed; and on the 4th of Jan. the trade assignee was appointed: on the 12th the present rule was applied for. The ground on which the rule was obtained was, that the warrant of attorney only authorised the judgment to be entered up in term, and not in vacation; and therefore, in this case the judgment was void as being entered up in vacation. The rule was granted on the authority of *Cobbold v. Chilver*, 4 Scott, N. R. 678.

Martin and *Willes* showed cause, and contended that the judgment being signed *as of* the preceding term was perfectly correct, although signed in vacation; but even if there was any irregularity in it, that the assignees were too late in their application, and therefore could not take advantage of the irregularity. As to the first point, they contended that the words of the warrant of attorney themselves showed that it was the intention of the parties that the plaintiff should have the power of entering up judgment in vacation as well as in term, and not a mere intermittent power, if this roll were made up the judgment would be entered as of the preceding term, but the judgment would only operate from the day on which it was signed, instead of the first day of the preceding term, as formerly, which is the intention of the judges in the rule of court, H. T. 4 W. 4, r. 3, (pleading rules.) With regard to the cases relied on on the other side of *Cobbold v. Chilver*, 4 Scott, n. r. 678, and *Bird v. Manne*, 13 L. J. Q. B. 123, they are unsound authorities, and cannot be supported: in neither of them was the attention of the court called to the proper meaning to be put on these words *as of a term* in those cases. The judgment of the court seems to go on the ground that the parties had given no authority to enter judgment in vacation. Now, the clear meaning of the parties is, that judgment may be entered in any vacation as of the anterior term; then the rule of court steps in and says that the judgment shall only take effect from the day on which it is signed. These cases also have been much shaken by *Jarvis v. South*, 13 M. & W. 152; and there has been a late case in this court before Mr. Justice *Wightman*, not yet reported, in which the decision was directly in favour of the plaintiff; and also, a case at chambers of *Warne v. Dale*, before Mr. Baron *Platt*, in which he supported a judgment signed in the same way as the present. Secondly, if there has been any irregularity, it has been waived by the assignees not having come before. The bankrupt would clearly have been precluded from taking this objection to the judgment by coming so late, and his assignees cannot stand in a better position than he would have done. *Ball v. Lawrence*, 13 L. J. C. P. 137, and *Charlesworth v. Ellis*, 14 L. J. Q. B. 331, are precisely in point, and are authorities for the plaintiff.

Whitehurst and *Addison* appeared in support of the rule, and contended that the case came directly within the authority of *Cobbold v. Chilver*; and therefore, as that was a judgment of the full Court of Queen's Bench, this court

would be bound by it. They also argued, that the assignees had not been guilty of any laches, for the trade assignee was not appointed until the 4th of Jan., and this rule was moved for on the 12th of that month, which could not be said to be any unreasonable delay.

Cur. adv. vult.

Mr. Justice *Erle*. This was a rule to set aside a judgment entered up upon a warrant of attorney as irregular. [His lordship then stated the facts of the case]. No steps were taken to question this judgment until the 8th of Jan., when affidavits were prepared. Now as the objection to the judgment was merely an irregularity, the bankrupt would clearly have been too late, as he ought to have applied within four days of his getting notice. He had notice on the 1st of December, so he was estopped; and if the assignees are to have the same time after they were appointed, they are estopped, for they did not come here until the 12th of Jan., they having been appointed on the 4th. Then as to the objection that the judgment was signed without authority as signed in vacation, when the warrant of attorney only authorised the judgment to be signed "as of Easter Term last past, Trinity Term now next ensuing, or any other subsequent term," it was argued that this was irregular, and that the case came within *Cobbold v. Chilver*; but, on the other hand, this case was followed by *Jarvis v. South*, and also, by a case before my brother *Wightman*, in this court, and one before Mr. Baron *Platt*, at chambers, in which judgments signed in vacation upon such a warrant of attorney were held good. The authorities, therefore, being conflicting, the case must be decided upon principle, without regard to authority. Now if a judgment is signed in term, it is not *as of* the term, but *of the day*, and it is only necessary to describe it *as of a term*, when in fact signed in vacation. If this judgment had been signed before the rule of court of H. T. 4 W. 4, there would have been no doubt but that it was regular, and there is really no ground for supposing that the intention of the parties was different since the rule upon the subject of judgments than before.

Rule discharged without costs.

Court of Bankruptcy.

In re Gilham. In re Alex. Braughan. Saturday, Feb. 6.

CONSTRUCTION OF 7 & 8 VICT. c. 96.

Semble, That an insolvent petitioner, or a bankrupt on his own petition, having no property to be distributed amongst creditors, is not within the scope and meaning of the statute 7 & 8 Vict. c. 96.

MR. Commissioner *Goulbourn*, seeing several members of the bar in attendance, wished to take the earliest opportunity of calling their attention to a matter of some practical importance, on which his brother Commissioner *Ellison*, of the Newcastle-upon-Tyne district, had done him the honour to confer with him.

He had before him a petition, presented on the previous day by a person named Braughan, who petitioned under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96. The petition filed by this person stated, that his estate was "of the value of nothing;" and this was not a singular instance. Great numbers of persons came to this court as petitioners under the acts referred to, who had not one farthing to distribute amongst their creditors. Now, the preamble to the act 5 & 6 Vict. c. 116, was in these words,—"Whereas it is expedient to protect from all process against the person such persons as have become indebted without any fraud or gross or culpable negligence, so as, nevertheless, their estates may be duly distributed amongst their creditors." Coupling this with the second section of the act 7 & 8 Vict. c. 96, and with the petition therein prescribed, he was of opinion that these acts were only meant to apply to persons who had some estate to distribute, and that persons who had no estate should be left for their remedy to the Court for the Relief of Insolvent Debtors. The second section of the act 7 & 8 Vict. c. 96, enacted, "that every petition for protection from process presented after the commencement of this act to the Court of Bankruptcy shall be in the form specified in the schedule hereunto annexed—A. No. 1;" and upon turning to the form prescribed, he found it contained these words,—"That your petitioner is desirous that his estate should be administered under the protection and direction of this honourable court, and that he verily believes such estate is of the value of £ at the least, unincumbered, and beyond the value of his wearing apparel and other matter which your petitioner is authorised to except by this act, and that the same is available for the benefit of his creditors." For a petitioner to swear that his estate was available for the benefit of his creditors, and at the same time to fill up the blank describing the value of his estate with the characters *Ol. Os. Od.*, was a perversion and a mockery. That the legislature intended the allegation cited should not be omitted from the petition was tolerably clear. If he were asked whether a petition could be entertained, omitting this allegation, he should reply, certainly not. Could the legislature then have meant anything so grossly absurd as requiring a petitioner to swear, that nothing was "available for the benefit of his creditors?" He had come to the clear conclusion, that the legislature never meant that insolvents without property should come to the Court of Bankruptcy for protection. There was another court which had the power of punishing such persons where they deserved punishment, whilst the Court of Bankruptcy could only punish indirectly, by withholding protection. Creditors were deprived of very important rights where debtors obtained protection under these acts. In ordinary circumstances, a creditor obtaining a judgment for any sum above 20*l.*, might take the person or goods of the debtor in satisfaction; but the creditors of those who obtained protecting

orders from the Court of Bankruptcy were prevented from touching either the person or goods of the debtors. Was the creditor to have no equivalent? The equivalent was, that the creditors should have the property of the debtor fairly distributed amongst them. There was no equivalent, however, when there was nothing to distribute. He was clearly of opinion, therefore, that those only were entitled to the benefit of the acts administered in this court, who had something remaining for their creditors, and that those who had nothing left should go to the Insolvent Debtors Court for relief. There was another class of persons to whom he wished also to allude: traders who became bankrupts upon their own petitions, under the 7 & 8 Vict. c. 96, s. 41. The object of that enactment was quite clear; it was to enable a bankrupt to come at once to this court for the distribution of his assets, and prevent any single creditor from taking possession of his estate and effects in satisfaction of his debt, thereby obtaining a preference over the other creditors. A great number of fiats were now opened day after day, upon the petition of the bankrupts themselves, in which nothing was left to distribute, and the parties came with not enough, or only enough, to pay the court fees. The only object of such persons in coming to this court was, to get a certificate. They claimed a certificate that they had conformed to the bankrupt laws, and this certificate gave them full protection for the future, and in effect cancelled all bygone debts. The case of *Gilham*, now before the court, was one of these instances: the estate was not enough to pay the expenses of the fiat. This was the case in nine out of ten instances where parties became bankrupts on their own petitions. The parties thought they acted in conformity with the law, because they went through the necessary forms. They had only half conformed, however, when they came without any assets for the benefit of creditors, and waited until they had squandered away their estate, or given it to some favoured creditor. His present intention was, to endeavour to put a stop to the perversion of the law which the present practice introduced. When bankrupts came without any assets, asking for a certificate, which was frequently nothing more than a license to "go and do likewise," for it was constantly found that such persons came again and again to that court, he was disposed to withhold from such parties a certificate. Bankrupts without assets, and insolvents without any estate, should go to the Court for the Relief of Insolvent Debtors, which had power to look into their cases, and punish wherever punishment was deserved. He should, of course, be happy to listen to the arguments addressed to him from the bar, in respect of any particular case that might hereafter be brought under consideration, but he thought it expedient to state thus generally, the principles which, as at present advised, he thought should govern his future conduct in this court in dealing with the cases of insolvents and bankrupts who had no assets.

NISI PRIUS CAUSE LISTS.

London.

Queen's Bench.

REMANETS, added to List at page 309, ante.

Ranyard	Byrne	Keiley	Proms. Elmsley and P.
Tucker and S.	Wooden	Hislop	Dt. Todd
Sole and T.	Belcher and others, assignees, &c.	S. J. Renshaw	Tilleard and Co.
Litchfield	Lowe	Saltmer	Dt. Evans
James Coppock	Collett	S. J. Curling	Pro. In person
W. W. Oldershaw	Lewis	Pilkington	Dt. H. W. Bull
Vardy	Burrows and another	Gabriel and others	Pro. G. Turner
Moulden	Rabson	Fitch	Oldershaw
Hook	Conyngham, Esq., and others	S. J. Macgregor	Prom. Fearon and C.
H. Codd	Lamond	Chapman	G. Price
Lawrence and Co.	Newton and another	Price	Feigned Issue, Wright
Drew and S.	Norton and another	George	Dt. S. Rogers
Chubb	Bevan	S. J. Hagger	Pontifex and M.
I. J. Foord	Rayner	Hawkes	Dt. Wire and Co.

NEW CAUSES.

English	[Co. Allen and another	Knight and another	Proms. Depree
Gregory, Faulkner, and	Ternstrom	Reimer and another	Proms. Westmacott & Co.
Fletcher and R.	Phillips	Newton	Dt. person
Lacy and B.	Bayley and another	S. J. Critchley	Proms. Milne and Co.
Same	Same	S. J. Sharp	Proms. Same
Wire and Child	Osborne and others	Hustler	Proms. N. Stevens & Co.
Rhodes and L.	Boutcher and others	S. J. Castelli	Pro. Oliverson, Lavis & Co.
Harbin and W.	Johnson	Bradley	Dt. Sudlow and Co.
John Pike	Berton	Wellesley	Dt. Robins
C. and H. Hyde	Doe dem Shaw	Shaw	Eject. Wm. Smith
In Person	Elmslie and another	Hyde, jun.	Dt. Soles and T.
Hale and Co.	Mossop	Dering	Proms. Hawkins and Co.
William Batty	English	S. J. Hales	Trov. Wright and K.
Lacy and B.	Bailey and another	Heaviside	Proms. Elmslie and P.
N. Bennett	Russell	Smith	Dt. J. W. Brooks
W. W. Oldershaw	Wright	Marks	Proms. H. Crocker
A. Digby	Cole	S. J. Forbes and others	Proms. Tatham and Co.
Meggison and Co.	Beaumont, Esq.	Alsop	Proms. Gregory, F., & Co.
Stevens and Co.	Borror	S. J. Brighton, Lewes, & Hastings Railway Company	Sutton and Co.
George Fitch	Belcher and others, assignees, &c.	Clements	Ca. Watson and Son
Walcot and C.	Herapath	Bonstead	Proms. Meggison and Co.
Bassett	Barns	Gee	Proms. Makinson
R. Hodgson	Crampton	Green	Proms. Wm. Savage
Sparham	Foggo	Clarkson	Sadgrove
T. Taylor	Newcombe	Allen	Morris and Co.
S. T. Cookney	Doe dem. Cornthwaite and others	Smith and another	Tres. and Ejt. F. Lewis.
F. S. Manning	Cumming	S. J. Cox	Fladgate and Co.
Murdock	Perkins and another	Watson	Dt. Kennett
Thomas Roberts	Maugham	E. W. A. Gathercole	Proms. Nicholls and D.
Same	Same	M. A. Gathercole	Proms. Same
Lawford	The Queen	S. J. Charretie and another, indicted with others	Indt. Kendell, and Co. for Charretie, Fry & Co. for Young, Bart.
Blower and Co.	Powell and others	Allen	Proms. Cotterill
Wyche	Lowe	S. J. Penn	Ca. Cattans and F.
Wood and B.	Wright and another	Bycroft	Pro. Lane
W. Meyrick	Hooper and another	Lloyd	Dt. Sweeting and B.
Same	Lewis	Chappell	Proms. H. F. Richardson
Hale and Co.	Lee	Stocks	Dt. Stevens and Co.
Jones, Blaxland, & Co.	Capper and another	Phillips	Proms. Bankart
Lutly and B.	Waterlow and others	Richardson	Dt. Wigglesworth and Co.
W. T. Whyte	Faulconer	Cole	Asst. Goddard and E.
Bassett	Coulson	Lewis	Dt. Adams
Sandys and P.	Grove	Rule	Proms. Bush and M.
Mawe	Gibbs	S. J. Wildman	Proms. Charles Parker

S. Heath, jun. Lawford	Field The Queen	Sharp, sued, &c. Charrette and another, in- dicted with others	Ca. S. J. Sydney. Ind. Fry and Co. for Char- rette, Kendall and Co. for debt, Sir W. Young Pro. Richardson and Co. Pro. Abbot Pro. Venuing and Co. Dt. Kirk Prom. Ashurst and Son Proms. Burbidge F. and Issue, Pope Dt. Thomas Martin Dt. Gillham Pro. Brundrett and Co. Slee and R. Pro. Thompson Ca. Donne Prom. Hook Dt. I. C. and H. Fresh- field
Amory and Co. Same Same W. O. Holcombe Amory and Co. H. T. Archer Same C. Hodgson Foord Sutcliffe Robert Still Mawe William Black W. W. Oldershaw Cox and S.	Waley Lake Shewell and another Garrod, extrix. Taylor, P. O. Lloyd Millwood Baker Gibbs Trimen Hooppell Dean King Bennett Alcock	S. J. Idle Bell S. J. Brown Garrod S. J. Black Skepp Lines Bessett Kirkwood S. J. De Barch Slee and another Simms Hodge Thompson S. J. Corporation of the Royal Exchange Assurance	Dt. Cattarns and F. Proms. Crafter Dt. S. Fisher Covt. Birch Dt. Nicholson Prom. Hindman and H. Ca. W. C. Humphries Proms. Reed Dt. Person Proms. I. Taylor Prom. Oldershaw Dt. King Ca. Bicknell and B.
Gilbert and Co. Foord W. Dimes Clapham Wallington Tate W. Smith Goodman and W. Same Beddome and W. Amory and Co. H. Chester and Son. W. Smith	Lingham Garrard Dimes Payne Wallington Brown Day (by next friend) Parker Brown and another Steele Taylor, P. O. Silly Harborne	Bull Cottrell Schultes, extrix. Dillon Lambert, Bart., sued, &c. Morrison Edwards Hills Sawyer Hoe Lowe Whichelo Ludlow	

Common Pleas.

REMANETS of Michaelmas Term, to be added to the List at page 310, ante.

Lawrance and P. Baistow and T. Kingdon and S. R. Ford J. Hudson J. J. Blake Kingdon and S. R. Forn Same Minet and Smith	Oxly Sullivan James Barker Powell Soady Hawkes Stanway Barker Barker	S. J. Hilder Irvine S. J. Clive Ottey S. J. Bradbury and another S. J. Mangles Moore S. J. Wells Gliffiths Alexander	Prom. Dawes and Sons Ca. Hodgson Prom. G. N. Giles Prom. Gough Wright and Co. Young, V. and Co. Ca. R. Swan Prom. In Person Prom. Price Bowen and May
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NEW CAUSES.

Hook Kirk J. H. Linklater G. Hensman Swan Ferrell J. J. Blake Bisgood	Tillam Foster Smith and others assignees Douglas Ashwell Clark Stiles Wendon	Dilke Ireland Leach and others Clifton Needham S. J. Rastrick Wylie Eastern Counties Railway Company	Dt. Dyne and Co. Dt. Govett Prov. Corner Dt. Nicholson and P. Tres. Scott and Co. Prom. Sutton and Co. Prom. Roberts Duncan Prom. J. Willis Dt. Same Prom. Lewis and L. Prom. Parkes Dt. Warneford Dt. Van Sandau and Co. In person Dt. Dyne and Co. Prom. Parker Tres. Hill and Co. Gedyo Dt. Surr and Gribble Prom. Coppock Prom. Richards
J. Watson Same J. S. Wheatley G. J. Huson Vallance and B. O. Gray Borradaile Hook Marten and Co. Townshend J. Paterson Cattlin Lawrance and P. Bigg and Co.	Mills Same Meek Huskinson and another Vallance and another Deacon Mortimer Tillam Kemp and another Deprose Thompson & another Thompson Backhouse Collard and another, ex- ecutors	S. J. Hopkins S. J. Gell Copp Pike Cowell S. J. Fisher Alston Woody Croft	

W. B. Jones	Verey and another	Wright	In person
Same	Bentley and another	White	Wilkins and M.
Wire and Child	Tibaldi	S. J. Wanless	Ca. James Taylor
Bevan and G.	Backhouse and others	Maitland	Prom. Loaden
Tripp	Tucker	Horton	Prom. Davies
Hill and Matthews	Cowell	Diprose	Tres. Townshend
A. J. Lane	Robins	Berry	Dt. H. W. Cross
Townshend	Miles	Haywood	Cross
T. Martin	Kine, executrix, &c.	Hollman	Dt. Sim
Cattlin	Thompson	Pagun	Dt. Whittaker
G. Annesley	Gannon	Mollady	Pettendreigh and Co
Lofty, Potter, and Son	Smart	S. J. Allison	Prom. Tilson and Co.
Miller	Frances and others	S. J. Wright	Dt. Hall
Basnett	Aaron Smith	H. B. Roberts and others	{ H. B. Roberts
C. Bobson	Lawes	S. J. Webb	{ Solomons
Venning and Co.	Smith	Turnbull	Prom. Hall
J. J. Spiller	Dickinson	Hodgson	Prom. Kinder
Richardson	Bushell	Weiss	Prom. Hensman
Alexander	Nimes	Dunn	Dt. Emslie and Co.
L. Jacobs	Cashmore	S. J. Hart	Prom. Hensman
Lofty, Potter, and Son	Bathyan	Welfit	Prom. Weymouth and G.
Bush and Mullins	Cartwright	Littlejohns, sued, &c.	Ca. Coverdale and L.
W. B. James	Park	Whitmore	Lindsay and M.
J. T. and H. Huddoleys	Gobey	Curling	Dt. Gregory and Co.
S. Yates.	Cusel	Pym	Dt. In person
Wilde and Co.	Bell, P. O.	S. J. T. W. Marriott	Prom. Ellis
Chidley	Smith	Stead	Prom. Abrahams and M.
Surr and Gribble	Surr	Savery and another	Prom. G. H. Taylor
Same	Same	Same	Prom. W. Harris
Cattarns and F.	Brown	S. J. Chapman	Prom. Same
H. J. Barber	Flight	Powell	Prom. W. W. & R. Wren
Thomas Clark	Buckland	Furber	Ca. F. J. Manning
Reed and L.	Black and others assignees	Blyth	Prom. C. V. Lewis
Empson	Upston	Bulcombe	Jay and Pilgrim
Vandercom and Co.	Cleave	O'Connor	Prom. Goddard and E.
W. Smith	Relfh	S. J. Hamber	Prom. Yates and Turner.
Hoppe and Boyle	Richards	Davies and another	Tres. G. Rutherford
W. H. Green	Potter	Norris	Prom. C. A. Chaplin
J. T. and H. Baddeley	Oliver	Renton	Prom. J. L. Beetholme
G. Bower	Granger	Cooper	Prom. Whittaker
			Prom. Van Sandau & Co.

Exchequer.

REMANETS, added to List at page 311, *ante*.

Fisher and De J.	McGregor	S. J. Knight	Tres. Kensit
NEW CAUSES.			
R. Vincent	Plumley	S. J. Benthall	Pro. Martindale
Tilson and Co.	Burnside	Dayrell	Pro. H. Jackson
Maples and Co.	Bell	S. J. Jenkyns	Pro. Bartholomew
Donne and T.	Williams	S. J. Clarke	Pro. H. Wickens
James Taylor	Vertue and another	S. J. Edge	Pro. Steadman
Crosby and Co.	Cohen	S. J. Williams, Bart.	Pro. N. Giles
Penfold	Boyd and another	S. J. Mangles and others	Pro. Young, V. and Co
Dawes and Son	Le Grand	S. J. Duncombe	Pro. Chilton and Co.
C. F. Chubb	Bailey	S. J. Ogle	Dt. Tucker, S. and Co.
Same	Same	S. J. Shuttleworth	Dt. Bell and Co.
Pontifex and M.	Pell	Jones	Pro. W. M. Armstrong
S. Hicks	Thompson and others	S. J. Radcliffe	Pro. Sharpe and Co.
Same	Same	S. J. Watson	Pro. Same
Lawrance and P.	Wyld	S. J. Black	Pro. Hindman and N.
Sharpe and Co.	Sharpe	New	Dt. G. Wansey
Same	Bracher	Livermore	Dt. Bevan
Chilcote	Chilcote	Perry	Dt. Capes and S.
Bell and Co.	Shuttleworth	Summer	Dt. Gregory and Co.
R. Ellis	Bailey and others	S. J. Mangles and others	Pro. Young and Co.
Milne and Co.	Furness	Law	Pro. Vincent
Johnson and Co.	Evans and another	Laycock	Pro. Cornthwaite and A
Hindman and H.	Gowar and another	Mullins	Dt. Overton and H.
Vincent	Hanmer	Quail	Dt. J. E. Nixon
Clarke and Co.	Wilson	Harris	Pro. Coode and Son

Hughes	Corlass	Huggins	Pro. S. M. Driver [Co.]
R. Hodgson	Benson and another S. J.	Anderson and others	Prom. Oliverson, Lavie &
Tilson and Co.	Leith	Billing	Ca. Walter and P.
Bristow and T.	Fenton	Beal	Pro. Rickards and W.
Goddard and E.	M'Kenzie	Booth	Pro. Croft
E. J. Sydney	Phillipps S. J.	Hart	Pro. Weymouth and G.
Matthews and M.	Lee	Stephens	Dt. Bennett
Murray	Burns S. J.	Gillan	Pro. Lindo
Burgoyne and Co.	Collett S. J.	Richardson	Issue, Cotterill
Van Sandau and Co.	Brooke	Pidgeon	Sci. fa. Stone and T.
Maples and Co.	Dickson and others S. J.	Mangles and others	Pro. Young, V. and Co.
J. Letts	Robson	Reynolds	Pro. Roy and Co.
W. H. Garry	Webb and another	Brighton	Pro. In person
Gregory, F. and Co.	Albiston S. J.	Burt and others	Pro. Reid and L.
Revolta	Prime	Jackson	Dt. Bowden
G. Lewis	Jones	Thurling	Ca. Swan
Same	Berkley	Garland	Dt. Hawkins and Co.
Tatham and Co.	Muter	Murray	Pro. Thomas
Roy and Co.	Chabot S. J.	Weld	Pro. C. Watson
Pontifex and M.	Duke, Knt.	Browne	Pro. Bell and Co.
Tatham and Co.	Prior and others	Rose	Pro. Hoppe and B.
Lawrance and P.	Wryght	Eastwood	Dt. Rolfe and E.
Tatham and Co.	Barker	Teague	Pro. W. W. Jackson
Poole and G.	Sheppard	Hooper	Dt. Fenning and Co.
Gregory, F. and Co.	Jones	Tilsey	Dt. Townall
Tilson and Co.	The Governor and Com- pany of Copper Miners in England S. J.	Ricketts and others	Pro. Edwards and M.
Walker	Clements S. J.	Flight	Crowder and M.
Vincent	Madely	Beastow	Dt. & Dtnue. Cox & Co.
Vincent	Lowe (P. O.)	Sherwood	Pro. Spinks
Tilson and Co.	Sutton	Rawlings	Pro. Lingley and G.
Rowland and Co.	Chilton, jun.	London and Croydon Rail- way Co. and another	Dt. R. Raven
T. S. Bowden	Jackson	Prime	Tres. Burchell and Co.
In person	Gresham	Polhill and others	Pro. Rivolta
Rodgers and P.	Newton	Sainty	Dt. Hodgson and Bishop
Gadsden and F.	Hampshire S. J.	The Eastern Counties Rail- way Company	in person
Gregory, F. and Co.	Boydell and another	Pierce	Dt. Wigglesworth
Brady and Son	Wilson S. J.	Randich	Ca. Duncan
Walton	Fraser	Lamont	Pro. Bridges and B.
Lindo	Gillan	Murray	Dt. L. Breton
Sharpe and Co.	Rogers and Others	Meteyard and another	Pro. Venning and N.
Wansey	Holmes	Carden	Pro. Woodruff
Gedye	Wakeham	Ford	Pro. W. A. Bainbrigge
Tatham and Co.	Fenn S. J.	Gould and another	Pro. Clarke and Co.
Nicholson and P.	Defosse and another S. J.	Seton	Pro. In person
Wilkinson and R.	Scott	Hart	Pro. Bischoff and C.
G. Vincent	Shelton S. J.	Morgan	Pro. Neate
Crowder and M.	Gibb	Marshall	Pro. Gulsworthy and Co.
Gedye	Wakeham	Stanway	Dt. Dimmock and B.
Same	Same	Beesley	Pro. Wilde and Co.
Devonshire and W.	Whitehead, jun. S. J.	Stephenson	Pro. Ford
Milne and Co.	Nix	Roche	Pro. Ford
F. J. Hand	Benson	Fawcett	Pro. Parkes
Beever and B.	Raby and another S. J.	Allan	Pro. Lyle
Gedye	Pain	Benns	Dt. Rivolta
Nicholson and P.	Curtis	Israel	Pro. Cotterill
E. Moss	Coleman	Green	Dt. Buchanan
Wilkinson and R.	Cooper (P. O.)	Wicks	Dt. Kirkman
G. Bower	Townley	Cox	Dt. Innes
Dangerfield	Cannam and another	Reeve and others	Pro. Morris and Co.
Bloxham and E.	Williams	Gadber	Dt. Gregory and Co.
Same	Falk and another	Same	Dt. Jerwood
Tilson and Co.	Allison S. J.	Berkbeck and another	Pro. Chester and Co.
Coe	Broom	Skaif	Dt. Same
Cornthwaite and A.	Blyth and others	Lucomber	Pro. Meggison and Co.
Baxters	Deverell	Dodwell	Pro. Crossfield
Phillips and Son	Edgar and another	Brookman	Dt. Vincent
W. Myatt	Percy	Hopkins	Pro. Archer
Finch and Co.	Brighton	Moore and another	Dt. Govett
Bankart	Passenger	Cassell	Pro. Van Sandau and Co.
Chisholme	Ruddock	Ingles	Dt. Hughes
			Dt. Beetholme
			Dt. Willoughby and J.

Goddard and E.	M'Kenzie	Griffiths	Pro. Wood
Bridger and B.	Monkes	Fox and others	Pro. Murray
E. A. Chaplin	Smith	Oakley	Dt. Gregory and Co.
J. G. Fisher	Neste	Procter	Pro. T. D. Taylor
H. Lloyd	Laws & another, assignees	Bott	Pro. Tripp
Walton	Fraser	Rochner	Pro. Venning and N.
Abrahams	Price	Temple	Pro. Pemberton
Same	Simmonds	Jay	Pro. Wimburn and Co.
Burnell	Tilly	Biss	Dt. W. H. Turner
J. B. Wathen	Brook	Amis	Ca. Patten
Same	Lovecraft	Gillon, jun.	Pro. Cornthwaite and A.
Wilkinson and R.	Cooper, P. O.	Falk	Dt. Keightley and Co.
A'Beckett and Co.	Alsager and others	Harrison	Dt. Austen and H.
Horn	Miller	Elcock	Dt. Capes and S.
T. B. May	La Mark	Ozun	Dt. Vallance and V.
Chilton and Co.	Norris	Anderson	Dt. Webb and Co.
Same	Pike	Greaves	Dt. Chester and Co.
Same	Huggins	Critchlow	Dt. Same
Jones and Co.	Brown and others	Holmes	Dt. H. R. Hill [Co.
J. Bell	Anton	Geralopulo	Pro. Oliveron, Lavis and
C. Parsons	Black	Baxendale and others	Ca. Tatham and Co.
Gedye	Lott	Elgie	Ca. Thomas and Son
S. Smith	Molineux	Sandon	Pro. Freeman and B.
Gregory, F. and Co.	Hubbersty	Yates	Dt. Sherman and S.
Same	Jones	Tilsley	Dt. Pownall and Co.
H. J. Turner	Warren	Legrew	Pro. Dyne and Son
Kendy	Abbey	Cobbold	Dt. Wilkinson and C.
Cook and S.	Biles	Beetham	Dt. Beetham and F.

PARLIAMENTARY NOTICES.

House of Commons.

FEES OF COURT.

MR. WATSON has given notice of a motion for a select committee to inquire into, and to report to the House on the taxation of the Courts of Law and Equity by collection of Fees, and the amount and mode of collection, and appropriation of Fees in the Courts of Law and Equity and all Inferior Courts, and in Courts of Special and General Session in England and Wales, and as to the Salaries and Compensations and Fees received by the Officers in those Courts.

NEW BILLS.

Regulating the Proceedings of the Commissioners of Railways and amending the Law of Railways. For 2nd reading. Mr. Strutt.

Improvement of Agricultural Tenant-right. For 2nd reading. Mr. Pusey.

Repeal of Penalties on Roman Catholics. For 2nd reading. Mr. Watson.

THE EDITOR'S LETTER BOX.

THE paper on Apportionment of Rent, from a contributor who rejoices in the signature "300," is acceptable.

"A Subscriber's" letter on Tithe Rent-charge Distress shall have early insertion.

The Cause Lists, Sittings, and other Professional Papers, encroach occasionally upon our usual variety of articles; but with the aid of small type and the enlarged space given during the last twelve months, it is trusted that nothing material has been omitted. The last two volumes exceeded the former by 100 pages each; and by careful selection and abridgment, 1,200 pages annually will probably comprise all that is really useful to be recorded. Supplements and double numbers are now eschewed.

The subject of the Removal of the Courts has not been lost sight of; but like many others, must yield for a time to urgent State necessities. Parliament will give it no attention at present.

The call for a Public Record Depository increases in urgency, and it appears that the government have at length yielded to the demand. A survey has recently been made of the Rolls Estate and its neighbourhood, with a view to the erection of an appropriate building.

The quere of Q. Q., relating to Vendors and Purchasers, and the right to interest shall, if practicable, be inserted next week.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 27, 1847.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

NEW CONSTRUCTION OF THE LAST INSOLVENT ACT.

THE novel views with regard to the practice in bankruptcy and insolvency propounded by Mr. Commissioner Goulbourn, and noticed in our original reports last week, (*ante*, p. 378,) have excited some attention amongst that portion of the profession which continues to take an interest in this subject. According to the learned commissioner's reading of the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, bankrupts on their own petitions, and insolvents who have no assets to distribute amongst their creditors, have no *locus standi* in the Court of Bankruptcy, and should be driven to seek for protection from the Court for the Relief of Insolvent Debtors. Construing the provisions of the two statutes, already referred to, under which authority is conferred on the Commissioners of Bankrupts in matters of insolvency, by the ordinary rules, and deducing the intention of the legislature only from the language in which it is declared, we are not prepared to say that Mr. Commissioner Goulbourn has come to an erroneous conclusion, so far as regards insolvents. With respect to bankrupts on their own petitions, (under the 7 & 8 Vict. c. 96, s. 41,) we venture, with all deference, to submit, that the distinction which the learned commissioner proposes to make between those who have assets to distribute and those who have none, although it may be well deserving the consideration of the legislature, is not justified by any legal enactment. When a fiat in bankruptcy issues upon the petition of the trader, ac-

cording to the existing law he must be dealt with precisely in the same manner as a trader who becomes bankrupt upon the application of a hostile creditor, and the discretion of the commissioner as to granting or refusing his certificate should be governed by a consideration of the bankrupt's conduct as a trader, and not by any reference to the real or supposed value of his estate. Assuming Mr. Commissioner Goulbourn's opinion as to the construction of the late acts relating to insolvents to be well founded, a point, however, on which we understand his brother commissioners are by no means unanimous, it may be worth while to glance at the consequences. We cannot concur with those who attach no importance to the discovery, although we are not sure that any practical benefit will be derived from the extra-judicial announcement of it. The most recent of the statutes to which we have referred (the 7 & 8 Vict. c. 96) came into operation in August, 1844, and since that period many hundreds—perhaps we might say thousands—of persons in town and country have availed themselves of its protective provisions, who did not divide, and never dreamt of dividing, one shilling amongst their creditors. The objection now suggested for the first time lay in such cases upon the threshold; the commissioners had no jurisdiction. The commissioners, however, never once seem to have conceived that they were acting without authority, and it was scarcely to be supposed that the insolvent petitioners should be more clear sighted. "Interim orders" and "final orders" were granted without end to persons who declared in their petitions, according to the prescribed form,

that they verily believed their estates to be "of the value of 0*l.* 0*s.* 0*d.*, at the least, unincumbered," and that the *same* was "available for the benefit of their creditors." Are all the petitions filed in this form to be considered as waste paper, and the proceedings founded on them as invalid and void? Neither lapse of time nor consent can supply the want of jurisdiction; and Mr. Commissioner Goulbourn's reading of the statute be correct, we do not see how it is possible to escape from the conclusion, that the commissioners acted in all such cases without authority, that their orders were legally invalid, and that sheriffs, gaolers, and others who may have acted upon and given them effect are without any sufficient justification. As to the insolvents themselves who have obtained "final orders" in the cases referred to, their safest course, we apprehend, will be to begin *de novo*, taking the precaution to insert in their petitions any sum which their improved circumstances may enable them to produce for division amongst their creditors. The smallest sum, (at all events 1*l.*.) it is presumed, would be sufficient to satisfy the requirements of the statute, and give the court jurisdiction. What is the minimum amount which the commissioners may deem a substantial compliance with the provisions of the act is a matter subject to their discretion, and must be left to their future determination. As we have already had occasion to observe,* in matters of insolvency there is no appeal from the decision of the commissioners. As the question now stands, the promulgation of those new views of the law has only tended to produce increased uncertainty and dissatisfaction, and to make "confusion worse confounded."

The Insolvent Acts of 1842 and 1844 always appeared to us to be experiments on the Law of Debtor and Creditor productive of unmitigated mischief; and, as we have already taken occasion to observe, the evil has been greatly augmented by entrusting the administration of those acts to a court unaccustomed to dealing with the affairs of insolvents, and to judges who, it plainly appears, were not particularly ambitious to have the sphere of their public utility enlarged by the acquisition of this new branch of jurisdiction; whilst the Court originally established for the Relief of Insolvent Debtors was maintained with diminished business, but without any dimi-

nution of expense to the country. Nevertheless, we are at a loss to conceive why any distinction should exist in the legal principles applicable to the cases of bankrupts and insolvents, or why the affairs of both classes should not be administered under the same roof and by the same judges. We are quite aware that this suggestion will be unpalatable to many who conceive that those who are interested in bankruptcy and in insolvent cases, belong to different classes of the community, and that their juxtaposition in a court of justice is productive of inconvenience. Experience has taught some persons, however, to believe, that the inconvenience arising from this source is imaginative rather than real; but, assuming its existence, how simple and obvious the remedy. Let the business of insolvents be disposed of at a different hour, or in a different part of the building from that appropriated for meetings in bankrupt cases, and the bankrupts, their creditors, and legal advisers, will be as little incommoded by the influx of insolvent petitioners and their followers, as they now are by the suitors of the Court of Requests in Basinghall Street. So much for the convenience of the profession and the public, which, in matters relating to the administration of justice, is too frequently overlooked. As for those who are selected to administer the law with reference to bankrupts and insolvents, we are satisfied they entertain a just sense of the importance and responsibility of the duties they discharge, and must feel they are as usefully and honourably employed when adjudicating upon the cases of the humblest as of the most elevated. The judges of the superior courts of common law preside at the Central Criminal Court and on the circuit, at the trials of persons the great majority of whom are illiterate, degraded, and steeped in poverty and crime. The careful, patient, and anxious performance of their duties on such occasions has not detracted from the veneration and respect with which the judges are universally regarded. It would be preposterous, therefore, if it could be considered derogatory to the dignity of inferior magistrates to adjudicate upon the cases of necessitous, imprudent, or fraudulent insolvent petitioners.

* *Ante*, page 146.

PRIVILEGES OF THE HOUSE OF COMMONS.

JUDGMENT IN THE CASE OF "GOSSETT v. HOWARD."

WE are now enabled to lay before our readers the short-hand writer's report of the judgment of the Court of Error in the case of "*Gossett v. Howard*," referred to in our last number, (*ante*, p. 361,) and printed by order of the House of Commons, upon the motion of Sir Frederick Thesiger.

After adverting to the lamented death of the Lord C. J. *Tindal*, who had heard a portion of the argument and died before it was concluded, Mr. Baron *Parke* said:—

"If the surviving members of this court had had any difference of opinion upon the judgment which they ought to pronounce, they would certainly have desired the attendance of the other judges who now compose the court, upon a second argument of this important case; but my brothers *Alderson*, *Coltman*, *Maule*, *Rolfe*, *Cresswell*, and myself, who heard the whole argument, agreeing entirely in opinion, we have thought it unnecessary to require that assistance.

"Upon the argument, every case bearing upon the question under consideration, or relating to the powers and privileges of parliament, were brought before us, and commented upon. We deem it right to abstain from giving an opinion upon some of the questions as to the privileges of the house, which were discussed by the learned counsel, because our judgment in no way depends upon them.

"We need not, therefore, decide whether the House of Commons is the sole judge of its own privileges, not merely when it is adjudicating on their alleged violation, but in all cases, so that whatever it commands must be deemed to be in conformity to them, and the mere order of the house, under all circumstances, a sufficient justification, precluding all inquiry into its legality by any ordinary court; because we find that the privileges involved in this case are not in the least doubtful, and the warrant of the Speaker is, in our opinion, valid, so as to be a protection to the officer of the house, upon a principle which, as it applies to the process and officers of every superior court, must surely be applicable to those of the High Court of Parliament, and each branch of it.

"The question arises upon a writ of error, after a judgment on demurrer to pleas, in an action of trespass, and all we have to determine is, whether those pleas, or any and which of them, are a good answer to the declaration of the plaintiff below, complaining of a trespass; and in order to do so, we must decide whether the defendant was justified or not in doing the act complained of, by the authority relied on in the pleas, and consequently whether that authority was sufficient in point of law."

After shortly stating the nature of the pleadings and the facts, so far as they were disclosed thereupon, the learned baron proceeded:—

"Upon the argument of the demurrer to these pleas, the Court of Queen's Bench was divided; but judgment was given by the majority for the plaintiff; and that on the ground of a defect in the warrant; and the question which we have to decide is the same, whether the warrant was defective or not?"

"The answer to the question as to the validity of the warrant, depends mainly upon a preliminary point, on what principle is the instrument to be construed? Is it to be examined with the strictness with which we look at the warrants of magistrates, or others acting by special statutory authority, and out of the course of the common law? or is it to be regarded as the mandate or writ of a superior court, acting according to the course of the common law?"

"The judges who composed the majority of the Court of Queen's Bench, seem all to have thought that the Speaker's warrant was to be strictly construed; and Lord *Denman* and my brother *Coleridge* appear to have assimilated it to the warrant or commitment of a justice of the peace, and applied the same rules of construction to which such an instrument is always subjected; all the three judges held it to be void, because it did not show a sufficient authority on the face of it, to justify the defendant in all he admitted to have done, though they did not agree in the nature of the defect. If this had been the case of a magistrate acting under some statute which gave him a special authority to take a man into custody, under the same circumstances as are stated in the three first pleas, we should, no doubt, have agreed with those learned judges, that a warrant in a similar form would have been void, those circumstances not appearing upon the face of it; for in the case of special authorities, given by statute to justices or others, acting out of the ordinary course of the common law, the instruments by which they act, whether warrants to arrest, commitments, or orders, or convictions, or inquisitions, ought, according to the course of decisions, to show their authority on the face of them, by direct averment or reasonable intendment; not so the process of superior courts, acting by the authority of the common law." [Citing *Peacock v. Bell*, 1 Saund. 75; *Countess of Rutland's case*, 6 Co. R. 54, a.; *Pursons v. Lloyd*, 3 Wils. 341.]

"Many of the writs issued by superior courts do, upon the face of them, recite the cause of their issuing, and show their legality; writs of execution, for instance. Others, however, do not, and though unquestionably valid, are framed in a form which, if they had proceeded from magistrates or persons having a special jurisdiction unknown to the common law, would have been clearly insufficient, and would have rendered them altogether void."

The examples cited in support of this proposition were, the writ of *capias ad respondendum* in use before the passing of the stat. 1 & 2 Vict. c. 110, and writs of attachment from superior courts. "It appears, indeed, that if a writ of a superior court expressed no cause at all, it would be legal, and the defendant not bailable, according to what Lord Coke says in the *Brewer's case*, 1 Rol. R. 134."

"It was a mistake to assert that an adjudication of a contempt was a necessary part of every committal for a contempt, and that an attachment would be invalid without it. It is not so in the superior courts of common law, nor in the Court of Chancery, as Lord *Lyndhurst* lately decided, after an inquiry into precedents." [*Ex parte Van Sandau*, 1 Phill. 605.]

"The proceedings in the House of Commons in the cases stated in the pleadings, in which it is acting for itself, and enforcing its own lawful authority, bear a close analogy to cases of contempt, in which the superior courts in Westminster Hall are acting for themselves, and are enforcing theirs. If in these courts the writ of attachment need not state any special grounds, in order to show that the court is acting duly, formally and regularly, what good reason can be assigned for requiring the House of Commons to do so?" Lev. Ent. 191; 1 Salk. 409; Com. Dig. tit. *pleader* 3, m. 21.

"We are clearly of opinion that at least as much respect is to be shown, and as much authority to be attributed to these mandates of the house as to those of the highest courts in the country; and if the officers of the ordinary courts are bound to obey the process delivered to them, and are therefore protected by it, the officer of the House of Commons is as much bound, and equally protected. The House of Commons is a part of the High Court of Parliament, which is, without question, not merely a superior, but the supreme court in this country, and higher than the ordinary courts of law, (Lord Camden, in *Entick v. Carrington*, 19 State Trials, 1047); and if we give credit to the courts of common law, that they will not issue writs of attachment, except in due course, and in accordance with the powers which the law gives them, and that, notwithstanding the possible abuse of the liberty of the subject to which this principle may give rise, by enabling a court to imprison for any cause, why should we not equally give credit to both branches of the High Court of Parliament, that they also will duly execute their powers, in obedience to the law from which they derive them, and to which, in common with all other courts, they are subject, though this course may also possibly lead to the same consequence, the abuse of the liberty of the subject, by their imprisoning any one at their mere will and pleasure?"

"The possibility of abuse, which is urged as an objection to the power of either house to issue its mandate in such a form, is no valid

argument against its existence. If it were, it would apply equally to all the superior courts, which, without doubt, have the power of issuing theirs, in the form above referred to; and it would apply also to the other admitted legal powers of these courts, which may be abused without adequate remedy.

"In case of an improper exercise of this power of attachment by a court of law or equity, or by either branch of the High Court of Parliament, there can be no appeal; the only remedy is by application to the sense of justice of each court; and it would be improper to suppose that any one of them would be more likely to abuse the power, or less likely to grant redress, than another."

As authorities for the rule stated with respect to the proceedings of the High Court of Parliament, the learned baron referred to *The Queen v. Pety*, 2 Ld. Raym. 1109; *Brass Crosby's case*, 3 Wils. 203, 2 Hawk. P. C., c. 15, s. 73; and *Hobhouse's case*, 2 Chit. 207; and proceeded to say—

"If then we construe the warrant of the Speaker with only the same respect that we should show to a writ out of the courts at Westminster, we clearly think we ought to hold it to be valid.

"From the pleas we know, that in fact the warrant issued in a matter in which the house had clearly jurisdiction, and that it properly issued. * * * * *

The house had an undoubted right to order the plaintiff into custody, and to have him brought to the bar, and had also as much right over its own forms as any other court has. It must be presumed that this is the right form, being that which it has chosen to adopt. And if we instruct ourselves by consulting precedents, we know that it is in a form not improper, for there are many in a form as general with respect to the recital, and some equally so as to the mandatory part. (See the printed Report of the Committee of Privilege in *Howard v. Gossett*, pages 94, 99, 101, 103, 104, 105, 115, 118.) For these reasons, we think that the warrant was valid, and the difference between the opinion of this court and that of the majority of the Court of Queen's Bench is only this, that they construe the warrant as they would that of a magistrate, we construe it as a writ from a superior court. The authorities relied upon by them relate to the warrants and commitments by magistrates, they do not apply to the writs and mandates of superior courts, still less to those of either branch of the High Court of Parliament."

One question only remains: Was the warrant such as to authorize all the trespasses complained of?"

"It appears to us that we ought to read the mandatory part in connection with the recital, and so reading it, it seems to us clear that it authorizes the defendant to do that which the recited order commanded, viz., not merely to take the plaintiff, but to bring him to the bar.

In this respect both my late brother *Williams*, and my brother *Coleridge*, and we think rightly, differed from Lord *Denman* and my brother *Wightman*.

"We agree, therefore, with my late brother *Williams*, and consider this warrant to be valid; and are of opinion, also, that the defendant was justified by it in all which he did. And for these reasons, we think that the judgment of the Court of Queen's Bench on all the pleas ought to be reversed."

As already observed, this judgment is in point of law the decision of the Court of Error, and therefore as binding and authoritative as if the court was composed of an actual majority of the judges. In point of fact, it is the determination of seven judges (including the late Mr. Justice *Williams*,) against that of three judges, The Lord Chief Justice *Wilde*, the Lord Chief Baron *Pollock*, Justices *Patteson*, *Erle*, and *V. Williams*, and Baron *Platt*, have not been called upon to give any judicial opinion on the question.

THE CITY OF LONDON SMALL DEBTS BILL.

THIS Bill "for the more easy recovery of Small Debts and Demands within the city of London and the Liberties thereof," much resembles the Small Debts Act of last Session. It will be sufficient to state the substance of the several clauses.

1. Actions to be hereafter commenced in Sheriffs' Court, for sums not above 20*l.*, to be heard and determined under the provisions of this act.

2. All other actions and proceedings to be carried on as if this act had not passed.

3. Court to be held at Guildhall, &c.

4. Mayor, &c. to appoint day and place for holding court.

5. After the commencement of act the existing Court of Requests to be abolished.

6. Proceedings in Court of Requests, commenced before the commencement of act, to be continued in the Sheriffs' Court under provisions of this act.

7. Judge of Sheriffs' Court to preside in actions under this act.

8. Judge of court may appoint a deputy.

9. Chamberlain of city to be treasurer.

10. Clerks of chamberlain to assist in duties of treasurer, and be paid such extra salary as Mayor, &c. shall think proper.

11. Clerk of the court to be appointed by mayor, &c.

12. In case of illness of clerk, &c., a deputy may be appointed.

13. Duties of clerks.

14. Offices of clerk, treasurer, and bailiff not to be conjoined.

15. Officers not to act as attorneys in the court.

16. Penalty of 50*l.* on non-observance of the two previous enactments.

17. Appointment of bailiffs.

18. Duties of the bailiffs, &c.

19. Provision respecting clerks, &c. of court of requests.

20. Treasurers, clerks, and bailiffs, to give security.

21. Fees to be taken according to schedule (A), and tables to be exhibited in conspicuous places.

22. Allowance of Compensation.

23. Officers of court may be paid by salaries instead of fees. If court abolished, no compensation allowed except in certain cases.

24. Fees and fines to be accounted for to treasurer.

25. Clerk's account to be settled and audited by treasurer.

26. Treasurer of court to render accounts to Mayor, &c.

27. Mayor, &c. to direct how balances shall be applied.

28. Clerk to send to Mayor, &c. an account of all sums paid by him to treasurer.

29. Mayor, &c. may provide court-houses, offices, &c.

30. Any gaol in the city of London may be used.

31. Power for purchasing land.

32. Mayor, &c. empowered to borrow money for the purposes of this act.

33. A general fund to be raised for paying off money borrowed.

34. Property of Court of Requests to vest in the treasurer of the court.

35. If separate court-house established, the clerk to have the charge thereof, and to appoint and dismiss servants, &c.

36. Judge to hold the court where Mayor, &c. shall direct. Notices for holding courts to be put up in a conspicuous place.

37. Process of the court to be under seal.

38. Act 7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 127, not to extend to this act.

39. Suits to be by plaint.

40. Summons may issue if cause of action arose in the city.

41. Summons may issue though cause of action may not arise in the city.

42. Processes out of district of court may be served by bailiff of any other court. 9 & 10 Vict. c. 95.

43. Proof of service out of district, or in the absence of the bailiff.

44. Demands not to be divided for the purpose of bringing two or more suits.

45. Minors may sue for wages.

46. Cases of partnership and intestacy.

47. Executors may sue and be sued.

48. No privilege allowed.

49. One of several persons liable may be sued.

50. Judge alone to determine all questions unless a jury be summoned.

51. Actions may be tried by jury when parties require it.

52. Party requiring a jury to make a deposit.

53. Who shall be jurors.
54. Number of the jury to be five.
55. Proceedings on hearing the plaint.
56. No evidence to be given of cause of action that is not in summons.
57. Notices of special defences given to the clerk, who shall communicate the same to the plaintiff.
58. Suits may be settled by arbitration.
59. Forms of procedure in courts to be framed by the recorder, &c.
60. Proceedings if plaintiff does not appear to prove his case.
61. Proceedings if the defendant does not appear.
62. Judge may grant time.
63. Defendant may pay money into court. Notice of such payment to be given to plaintiff.
64. Parties and others may be examined.
65. Persons giving false evidence guilty of perjury.
66. Summonses to witnesses.
67. Penalty on witnesses neglecting summonses.
68. Fines how to be enforced and accounted for.
69. Costs to abide the event of the action.
70. Judgments how far final.
71. No actions to be removed into superior courts, but on certain conditions.
72. No action to be removed in any case into the Lord Mayor's Court, or the Court of Hustings, or before the Lord Mayor, by way of markment.
73. Who may appear for any party in the court.*
74. Court may make orders for payment by instalments.
75. Cross judgments.
76. Court may award execution against goods.
77. Execution not to issue till after default in payment of some instalment, and then it may issue for the whole sum due.
78. What goods may be taken in execution.
79. Securities seized to be held by bailiff.
80. Parties having obtained an unsatisfied judgment may obtain a summons on charge of fraud.
81. Commitment for frauds, &c.
82. Power of judge to rescind or alter orders.
83. Power to examine and commit at hearing of the cause.
84. Mode of issuing and executing warrants of commitment.
85. Imprisonment not to operate as a satisfaction for the debt, &c.
86. How execution may be had out of the jurisdiction of the court.
87. Power to judge to suspend execution in certain cases.
88. Regulating the sale of goods taken in execution.
89. As to the liability of goods taken in execution under 8 Anne, c. 17. Landlords may claim certain rents in arrear. Bailiffs making levies may distrain for rent and costs. In case of replevins. 57 Geo. 3 c. 93.
90. No execution shall be stayed by writ of error.
91. Execution to be superseded on payment of debt and costs.
92. Debtor to be discharged from custody upon payment of debt and costs.
93. Minutes of proceedings to be kept.
94. Suitors' money unclaimed in six years to go to general fund.
95. Power of committal for contempt.
96. Penalty for assaulting bailiffs, or rescuing goods taken in execution.
97. Bailiffs made answerable for escapes, and neglect to levy execution.
98. Remedies against, and penalties on bailiffs and other officers for misconduct.
99. Penalty on officers taking fees besides those allowed.
100. Claims as to goods taken in execution to be adjudicated in court.
101. Actions of replevin may be brought in the court.
102. How actions of replevin may be removed.
103. Possession of small tenements may be recovered by plaint in the court. If tenant, &c. neglect to appear, or refuse to give possession, judge may, on proof of service of summons, issue a warrant to enforce the same.
104. The manner in which such summons shall be served.
105. Judges, clerks, bailiffs, or other officers not liable to actions on account of proceedings taken.
106. Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity.
107. How execution of warrant of possession may be stayed.
108. Proceedings on the bond for staying warrant of possession, &c.
109. Concurrent jurisdiction of superior courts where plaintiff resides more than 20 miles from defendant.
110. As to actions brought for small debts in superior courts. No costs.
111. Penalties and costs to be recovered before a justice, and levied by distress.
112. In default of security offender may be detained till return of warrant of distress.
113. In default of distress offender may be committed.
114. Penalties not otherwise applied to be paid into the general fund.
115. Justices may proceed by summons in the recovery of penalties.
116. Form of conviction.
117. Proceedings not invalid for want of form.
118. Distress not unlawful for want of form.
119. Limitation of actions for proceedings in execution of this act.
120. Provision for the protection of officers of the court.
121. Act not to affect Court of Hustings, or Lord Mayor's Court.
122. Interpretation of act, &c.

* This section authorises the judge to regulate the fees to be taken by barristers and attorneys and the allowance thereof in costs. This is an improvement on the last Small Debts Act.

REAL PROPERTY COMMISSION.

THE rumours which have been some time afloat regarding a new Real Property Commission have at length been realized. Instead of a semi-official authority under a letter from the Lord Chancellor, her Majesty has been well advised to issue a formal commission, of which the following notice appeared in the *Gazette* of the 19th February:—

The Queen has been pleased to direct Letters Patent to be passed under the Great Seal, constituting and appointing

The Right Honourable Lord Langdale,

The Right Honourable Lord Beaumont,

Joseph Humphry, Esq., one of Her Majesty's Counsel,

Henry Bellenden Ker, Esq., Barrister-at-Law,

Walter Coulson, Esq., Barrister-at-Law.

George Frere, Esq., and

Francis Broderip, Esq.,

Her Majesty's Commissioners for inquiring whether the Burdens on Land can be diminished by the establishment of an effective system for the Registration of Deeds and the Simplification of the Forms of Conveyance.

We gave an intimation of this measure on the 6th February; but some of the gentlemen whose names were then stated, declined the honour of the proposed office. It will give great satisfaction to the junior branch of the profession that Mr. Frere, who recently retired from practice, has been induced to act as one of the commissioners. His great experience, legal knowledge, sound judgment, and high character, qualify him peculiarly for the important duty he has undertaken; moreover, this selection looks well, inasmuch as it cannot have been made on political grounds.

REFORM IN THE MASTERS' OFFICES IN CHANCERY.

It was referred to the Equity Committee of the Law Amendment Society "to consider whether any and what improvement can be made in the present mode of proceeding in the Masters' offices."

The following is the report of the committee:—

"This committee, on a former occasion, presented a report to the society, which has been printed, containing various propositions for enabling the Masters of the court to take accounts of executors and administrators, and to make orders for the distribution of the assets

of testators or intestates, without the intervention of the court; but it having been suggested that, in consequence of the great delay and expense attendant upon proceedings before the Masters, according to the present system of procedure in their offices, any propositions, however important, which would tend to increase their duties, might be received with distrust by the profession and the public, this committee have directed their attention to the causes of the present inefficient state of the practice in these offices, and to consider the best mode of removing the evils complained of consistently with the existing constitution of these offices.

"Of the delays in prosecuting inquiries before the Masters, this committee deem it unnecessary to offer any examples, it being notorious that references of any importance, where the parties are adverse, are seldom completed in less than two or three years; that, in many cases, the reports have not been obtained in less than seven or eight, or even ten years, after the decrees directing the reference; while in others the parties have been driven by the delays and difficulties in obtaining any final reports to abandon their claims altogether, or have submitted to heavy sacrifices, rather than incur the risk of so protracted and ruinous a litigation as seemed to be inevitable, in case the reference should be prosecuted. The causes of these great delays are to be traced, principally, to proceeding by hourly warrants, and the non-attendance of the parties on the warrants so taken out, and to the necessity for frequent repetitions of proceedings, and going over the same ground, in consequence of the intervals that elapse between the warrants; and also to the practice of allowing evidence to be received at any time before the warrant, on preparing the report.

"With regard to non-attendance, a remedy has been attempted to be applied by the orders 51 to 56 of 1828, the Master being empowered by orders 51 and 52 to fix the times within which the parties are to take proceedings before him; by order 53 to proceed *ex parte*; it being declared by order 54 that any such proceeding *ex parte* shall not be reviewed unless he shall be satisfied that the party was not guilty of wilful delay or negligence, and then only on payment of all costs occasioned by his non-attendance; and by order 55 to certify what costs, if any, shall be paid by an absent party, in case he does not think it expedient to proceed *ex parte*. By order 56 the Master is also empowered, on the application of any party interested, to commit the prosecution of the decree or order to him, where the party actually prosecuting it does not proceed with due diligence. The powers given by these orders would seem to be sufficiently stringent to remove the evils intended to be guarded against, and yet they have notoriously failed of their object. Whether the failure is attributable to the lax mode of conducting proceedings in the Masters' offices, or to the disinclination of the Masters to exercise powers of an apparently

arbitrary character when the parties themselves agree to act upon a system of mutual accommodation, it is not necessary to inquire; but it cannot be doubted that some controlling power is wanted to compel a strict attention, as well on the part of the Masters as of the practitioners before them, to the rules necessary to be observed for administering justice in a speedy and satisfactory manner. The committee consider that this end may be attained by assimilating the proceedings before the Master as nearly as circumstances will allow, to proceedings in the ordinary courts of justice; and for this purpose the following suggestions are submitted:—

"1. That each Master shall have a daily list of causes, and that each cause shall be called on in its turn, and be proceeded with continuously, until the whole matter capable of being considered and disposed of has been gone through.

"2. That the Masters shall fix a time for the disposal each day of matters of course; and after the same shall be disposed of, the Masters shall proceed consecutively with all such causes and matters as are not of course, and which shall be entered in the general list, giving priority, when it shall be necessary, to exceptions for insufficiency, and objections for proximity, impertinence, and scandal, in order that every such case may be disposed of with all reasonable despatch.

"3. That to afford facilities for the attendance of counsel, the Masters' sittings shall be from eleven till five on alternate days, and that no cause in the list, which is to be attended by counsel, shall be called on before three o'clock.

"4. That no more than twelve causes shall be put in each day's list; and that the fifth and three following causes shall not be called on before one o'clock; and the ninth and three following causes shall not be called on before three o'clock, unless with the consent of the parties attending the reference.

"5. That in the event of either party not being prepared to proceed when the cause is called on, he be ordered to pay the costs of the day to the other party, which, in case solicitors only attend, shall be fixed at two guineas; and in case counsel shall attend, at five guineas; unless a satisfactory reason be given for the default; and that on the taxation of costs relating to any proceedings in the Masters' offices, the taxing master shall require copies of all entries of orders for the payment of costs made by the Masters to be produced before him.

"6. That a certain number of days in each vacation be set apart for disposing of causes in which counsel are engaged to attend.

"7. That each Master shall keep a book, to be called "The Master's Entry Book," in which shall be entered, under proper dates as they occur, all hearings before him, specifying the cause or matter, and the solicitors, or parties and counsel who appear before him, and to which he is to add, in his own hand-writing, the points ruled, or opinions finally expressed by him so that such book may at all times

afford a clear record of the proceedings before him; and upon all occasions where it shall be required by either party, or by the court or taxing master, such books shall be produced in court at any hearing before the Lord Chancellor, the Master of the Rolls, or the Vice-Chancellors; and before the taxing master on any taxation in the suit.

"8. That on the warrant for considering the decree, or at such other time as the Master shall deem it advisable, the Master shall fix a time within which each party shall be bound to complete his evidence, and that no evidence shall be allowed to be brought in after the expiration of the time fixed, except by special leave of the Master; and that if any order shall be made by the Master for enlarging the time so fixed, the same shall be subject to appeal.

"9. That in cases where several inquiries are directed by a decree, and the Master shall deem it convenient to conclude one inquiry before proceeding with another, and shall express his opinion upon the result of such inquiry, or any subject connected with it in writing, (the same to be entered in his book,) no further evidence shall be received in relation to the inquiry, or subject, so adjudicated upon, except at the request of the Master, or by leave of the court.

"It need scarcely be stated, that the principal object sought to be accomplished by the foregoing suggestions is continuity of proceedings; and this being so important a feature in the proposed amendments, the committee deem it right to refer to the testimony given on former occasions in favour of this mode of proceeding by parties eminently qualified to form a correct judgment upon the subject.

"In a publication relating to the Masters' offices, published in 1841, which is attributed to one of the Masters of the court, the writer says:—"The power enjoyed by the suitors of making their own appointments is without doubt the reason why their appointments are so ill kept. They cannot value what is so easily obtained. It not unfrequently happens that of the warrants taken out for a *whole day* *not one is attended*. I do not believe that, upon an average, more than two out of four by the counsel who have been engaged. It has been said in a tone of quasi complaint, "and the Master does not interfere." The Master must earnestly wish that he could effectually interfere, for he is the principal sufferer. After having got up the case, he has to discuss it from his memory, and perhaps a fortnight after to repeat the whole labour with no better result. But how is he to interfere? He cannot punish the defaulter by striking the case out of the paper, since in two or three days it will appear again. He may, it is true, proceed *ex parte*; but that will only lead to three discussions instead of one; and he seldom has this power; for if a solicitor finds it convenient to break his appointment, he generally sends word to his opponent, and they pair off together."

"Master Lynch, in his speech in the House

of Commons, on the 5th of August, 1840, which has since been published, states, that in a case before him, called 'The Bury St. Edmund's case,' where between seventy and eighty separate accounts were directed to be taken, the parties having proceeded for two days, six hours each day, the matter was gone through in the middle of the third day; whereas, if it had been proceeded with in the ordinary way of warrants, the taking of the accounts would have occupied a year or more, and he adds: 'There is no Master in the building who is not perfectly alive to the advantages of continuity of proceeding, and who, as far as in him lies, does not carry into effect such continuity; but, until directed by a higher and competent authority—until the Master is directed not to proceed with a cause until he finishes the preceding one, he cannot, he ought not to do more than he does at present.'

"Mr. Field, a solicitor of extensive practice in the Court of Chancery, in his pamphlet on the Defects in the Offices, Practice, &c., of the Equity Courts, published in 1840, says: 'I willingly admit that the fault of the delay rests greatly, in chief part, I would say, with the solicitors. There is a sort of feeling that anything may be put off here; solicitors come and talk together a minute or two, get their attendance marked, and walk away again. It is considered a positive want of courtesy if you swear to your service and proceed *ex parte*. The Masters take no steps to compel the solicitors to be ready: they adopt Mr. Lowe's view, that it is the solicitor's own look out how fast he should proceed, and that a solicitor and the client are independent of the court in this respect.'

"As an example to show the value of continuity of proceeding, Mr. Field refers to a case of pedigree that he was engaged in making out before the Master, where there were 400 parties whose births, deaths, &c., were to be proved; to accomplish which, according to the usual plan of warrants, would have taken a year, and this by continuous proceedings was finished in two days.

"Mr. Winter, also a solicitor of large practice, in his evidence given before the Chancery Commissioners in 1824, states, that, in a suit which he mentioned (*Morgan v. Clarendon*,) the solicitors of the parties must have walked backwards and forwards to the Masters' office to attend warrants 1878 times, and thus wasted 624 hours, which is more than two months at 10 hours a day; 350*l.* was charged for the attendance on these warrants, and the cost of the warrants was 160*l.* 11*s.*

"This committee deem it unnecessary to lengthen their report with further illustrations; but they are satisfied there would be little difficulty in showing that half the time of the Masters is uselessly consumed by the present mode of conducting proceedings in their offices. Parties who have to attend warrants are seldom ready to proceed with the business appointed for at least ten minutes after the time appointed; and, assuming this to apply to only

six warrants, one hour a day will be wasted in each office, and there being eleven Masters, the time so wasted is equal to two working days. To this is to be added the time occupied in reading papers over again after a long delay, the warrants that are not attended, and the reiteration of proceedings by the production of fresh evidence.

"It has not been considered necessary to submit any direct propositions with the view of declaring the offices of the Masters to be open courts, because it is generally admitted that they are already open to all suitors who may choose to attend; and the proposed plan of having daily lists of causes will render it necessary for the parties whose causes are next in rotation to the cause in hearing to be in attendance, so that all the publicity which can be effected in the offices as now constructed, will, it is conceived, be ensured.

"This committee deem it right to add, that they submit the foregoing propositions with greater confidence, because the principle of continuous proceedings has received the sanction of the late Lord Chancellor of Ireland, Sir Edward Sugden; and the 1st, 2nd, and 7th propositions are similar in terms to the rules settled by that learned judge for regulating the practice of the Masters' offices in Ireland, and which rules are now in operation there, and have proved, as this committee can vouch from the highest authority, most beneficial both to suitors and practitioners in the Irish Courts of Equity.

"In conclusion, the committee beg to state that it has been suggested that one mode of preventing the delays complained of would be by the court fixing a time within which the Master should make his report; and one of the most experienced Masters of the court in his evidence before the Chancery Commissioners, appears to countenance such a proposition, but the committee have been deterred from recommending the adoption of this suggestion from the difficulty that must arise in ascertaining the proper time to be fixed, and an apprehension of the expense that might be occasioned by applications to extend the time."

APPORTIONMENT OF RENTS, &c.

IN RESPECT TO TIME.

BEFORE the statute of 11 Geo. 2, c. 19, if tenant for life demised lands and died between the rent-days, the rent was lost for the fractional portion of the year, as the period had not arrived at which the lessor could claim it. And the remainder-man, or reversioner could not claim the whole rent, but only for use and occupation since the decease of the tenant for life.

By the 15th sect. of this statute, however, it is enacted, that in such case the executors or administrators of the tenant for life may, by action on the case, recover from the under-tenant the proportionate part of the rent accru-

ing from the last rent-day to the death of the tenant for life.

By a liberal construction of the courts, and more particularly by the 1st section of 4 & 5 Wm. 4, c. 22, it has been held and enacted, that the act of Geo. 2 shall apply to all cases in which the lease or demise shall determine on the death of the party making the same, (although such person were not strictly tenant for life,) or of the party for whose life he holds. So that the executors of tenant in tail without issue inheritable, are equally entitled to an apportionment of rent.

It makes no difference whether the tenancy be for a term or from year to year.

The stat. of Geo. 2, applied (and its amendment by the 1st sect. of 4 & 5 W. 4, still applies,) to cases of the determination of the interest of the *lessee* by the death of the lessor, or of the party for whose life the lessor held; in which case the executors of the person granting the lease can recover a proportionate part of the rent from the lessee by action on the case; or if he has paid it to the remainder-man, the executors may recover a due proportion from such remainder-man.

But there are cases in which the interest of the party entitled to receive the rent determines on his death though the interest of the lessee continues: e. g. where tenant for life takes an estate by devise or otherwise, subject to an existing lease, which outlives his life-interest; or where tenant for life, in pursuance of a power, makes a lease binding on the remainder-man; here, before the statute of Wm. 4, the whole of the rent of the half year or quarter current, at the death of the tenant for life, would have been payable to and retainable by the remainder-man: but by the 2nd section of that statute it is enacted, that all such rents reserved on any instrument executed, or will coming into operation after the passing of the act, shall be apportioned. The statute enacts, that all rents reserved on any lease granted after the passing of the act, and all rents, annuities, dividends, and all other payments of every description made payable or coming due at fixed periods under any instrument that shall be executed after the passing of the act, or (being a will or testamentary instrument) that shall come into operation after the passing of the act, shall be apportioned, so and in such manner that on the death of any person interested in any such rents, annuities, dividends, or other payments as aforesaid, or in the estate or fund from which the same shall be issuing or derived, or on the determination by any other means whatsoever of the interest of any such person, he or she and his or her executors, administrators, or assigns, shall be entitled to a proportion of such rents, annuities, dividends, and other payments, according to the time which shall have elapsed from the commencement or last period of payment thereof respectively, (as the case may be). But with respect to rents reserved on leases, that the whole rent shall in the first instance be paid by the tenant when, and not until the whole is due, to the party who, before the pass-

ing of the act, would have been entitled to receive the same, and that such party shall account for a portion thereof to the representatives of the person whose interest has so determined, and the same shall be recoverable by them by action or suit at law or in equity.

This act does not apply to the following cases, where there is no apportionment: viz., between the real and personal representatives of tenant in fee, *Browne v. Amyot*, 3 Hare, 173, or tenant in tail with issue, who has made a lease pursuant to 32 Hen. 8, c. 28, — the whole goes to the heir general or special. If tenant in tail make a lease *not* in conformity to the statute Hen. 8, and die leaving issue, a doubt arises as to the application of the statutes 11 Geo. 2, and 4 & 5 Wm. 4. If the lease were by deed for a term of years, (a lease in this case not being void but duly voidable,) and the heir in tail confirm the lease and adopt the tenant, it is supposed that he would become entitled to the whole accruing rent. But if he were to repudiate the case and not adopt the tenant, *quare*, — could the representatives of the deceased recover a proportionate part from the lessee? — If it had been a *parol demise* it is apprehended that they could, and also, that the heir in tail could not by any adoption of the tenant entitle himself to the whole rent, but that such adoption would create a new tenancy.

For an exposition of the law as it stood before 4 & 5 W. 4, see an admirable note to the case of *ex parte Smyth*, 1 Swanston, 337. See also the observations on the new statute in Hayes on Conveyancing.

ANNUITIES.—DIVIDENDS.

The rule at law which refuses apportionment of rent in respect of time, was applicable to all periodical payments becoming due at fixed intervals, though not to sums accruing *de die in diem*. Annuities, therefore, and dividends on money in the funds were not apportionable. But interest, whether the principal were secured by mortgage or bond, might be apportioned, as it is conceived annuities and dividends will now be, if created or settled since the passing of the act 4 & 5 W. 4, c. 22.

But in cases of annuities or periodical payments, which being *granted for life*, determine on the death of the *cestui que vie*, a difficulty arises as to the application of the act. Thus, if A. grants an annuity to B. for the life of B., payable half-yearly, and B. die between two of the half-yearly days of payment, are his representatives entitled to a proportionate payment, or does it still remain as formerly, that the half-year's payment is lost? — it is apprehended that such is still the case. And it is still prudent in all cases to provide in the deed for the payment or non-payment of a proportionate part. See Hayes' Conveyancing.

The act does not apply to cases where it is stipulated that no apportionment shall take place, nor to annual sums payable on policies of assurance.

PROVINCIAL LAW SOCIETIES. LAW OF VENDOR AND PURCHASER.

COUNTIES NOT PROFESSIONALLY REPRESENTED.

LOOKING over the List of the Provincial Law Societies, which was originally given in the Legal Almanac, and annually revised with some pains in that work, and comparing it with a list which we have revised to the present time, we find there are no less than sixteen English and ten Welsh counties without any law society or law library, or other legal association.

We adverted last week to several of the advantages resulting from the establishment of professional societies in regard to fair and honourable practice, the prevention and punishment of mal-practice, and the promotion of the true interests of the public in the due administration of justice. We need not add, that the profession itself, not merely in its just emoluments, but in its station and character, is materially concerned in the establishment and good management of these associated bodies. It is needless to specify the counties wherein no such societies exist. Our readers in those counties must know and feel the want of them, and we recommend them to communicate with the societies in adjoining counties, and lose no time in following their example.

PETITIONS FOR REPEAL OF ATTORNEYS' CERTIFICATE DUTY.

	Signatures.
1847, Jan. 22.—Attorneys and Solicitors practising in <i>Lewes</i> , (Mr. Fitzroy)	9
Feb. 8.—Attorneys and Solicitors residing at <i>Stafford</i>	12
Feb. 9.—Attorneys and Solicitors of <i>Warminster</i> , (Mr. Sidney Herbert)	9
Feb. 10.—Attorneys and Solicitors residing at <i>Alford</i> , (Mr. Christopher)	6
Feb. 10.—Attorneys and Solicitors residing at <i>Horncastle</i> , (Mr. Christopher)	7
Feb. 10.—Attorneys and Solicitors of <i>Exeter</i> , (Sir John Duckworth)	61
Feb. 12.—Attorneys and Solicitors residing at <i>Chesterfield</i> , (Mr. Evans)	12
Feb. 16.—Attorneys and Solicitors at <i>Salisbury</i> , (Mr. Chaplin)	14
Feb. 16.—Attorneys and Solicitors residing at <i>Market Deeping</i> , (Sir John Trollope)	3
Feb. 16.—Attorneys and Solicitors at <i>Grantham</i>	12

RIGHT TO INTEREST.

BILL for specific performance of contract of sale filed February, 1839 : 1842, decree (against vendor) for specific performance of same purchaser to lodge what shall be found due on account of purchase-money of 3,000*l.*, and declared entitled to the rents, issues and profits of the lands from 1st January, 1839.

May, 1842.—Master reports that after crediting purchaser with 500*l.*, amount of rents brought in by the receivers, (in the cause and in the matters of certain judgment creditors,) and deducting same from amount of purchase-money, (with 4 per cent. from 1st January, 1839,) the balance of purchase-money amounts to 2,620*l.*

Nov. 1842.—Decree confirming report, and that as against said balance of 2,620*l.*, the purchaser is entitled to credit in 600*l.*, amount of rents now in court not credited in report. Purchaser to be entitled to such further credit as shall appear on receiver's final account, on passing of which, purchaser to lodge the balance of purchase-money with interest, and on lodging same to be at liberty to go into possession.

The receiver, by order of the court and on notice to the purchaser, but without his express acquiescence, invested the rents from time to time in the funds from May 1839, when the funds were high. In 1847, and before receiver had passed his final account, purchaser files a charge, offering to lodge the balance purchase-money with 4 per cent. on the entire purchase-money to the time of report and on the balance then found (2,620*l.*) since, but requiring not only the rents *in specie* from 1st January, 1839, but also,—1st, the dividends received on said sum of 500*l.* up to the time of report; and 2ndly, the dividends received on same since said report; and 3rdly, the dividends received on all other rents invested since said report.

The funds have fallen greatly since the investments, and the purchaser declines to take a transfer of the funds, but insists on the rent *in specie*, to which latter the vendor admits he is entitled, but disputes his right to the dividends either before or since the report.

To what is the purchaser entitled? He also insists, in case of these dividends not being credited to him, to set-off the rents from time to time, as same were brought in by the receiver as against the balance of the purchase-money and to make rests accordingly, reducing (at and from the time of each lodgment by the receiver) the balance on which interest is to be charged against the purchaser. Is he entitled to do so under the decree?

Q. Q.

ATTORNEYS TO BE ADMITTED,

Easter Term, 1847.

<i>Clerks' Names and Residences.</i>	<i>To whom Articled, Assigned, &c.</i>
Andrew, Frederick, Chorlton-upon-Medlock	Edward Chippindall Milne, Manchester
Andrew, Robert, Doncaster	Edward Sheardown, Doncaster
Ashley, William Edward, 8, Elizabeth Street, Brompton; and Brompton Terrace	J. Would Lee, Newark-upon-Trent
Attenborough, Winfield, 68, Oxford Street	George Burnham, Wellingborough
Allaway, James, Reading	John Jackson Blandy, Reading
Bussell, Edward Ruben, 24, Gerrard Street, Islington; Winckworth Buildings; and Gloucester	F. Buchanan Hoare, Gloucester
Boyer, Richard, 71, Basinghall Street; and Newgate Street	John Gauntlett, Furnival's Inn
Bentley, George Wheeler, 32, Golden Square; and Worcester	John Ellis Clowes, King's Bench Walk
Blundell, John, 16 B, Old Cavendish Street; and Crosby Hall, near Liverpool	John Brooke Hyde, Worcester
Bateman, Richard, 10, Bedford St.; Knowle; Newland Street; and Myddleton Square	Messrs. Eden and Stanistreet, Liverpool
Brown, George, 21, Finsbury Place; and Shoreditch	Arthur John Knapp, Bristol
Bellingham, Charles Eudo, 6, South Square; and Saffron Walden	Henry Ashley, Shoreditch
Blake, Richard Henry, Featherstone Buildings	Henry Whitmarsh, Battle
Barras, Henry, 2, Grenville Street; and Farn Acres	John Payne, Milverton
Brackenridge, Fran. Jerdone, Bush Hill, Edmonton	George Faulkner, Bedford Row
Broughton, Robert, 21, York Place, City Road	Ralph Walters, Newcastle-upon-Tyne
Boyle, Charles, 43, Gillingham Street, Pimlico; Edgbaston; and Lower Belgrave Place	William Brackenridge, Bartlett's Buildings
Badger, Walter Samuel, 3, Essex Court, Temple; and Rotherham	Francis Broughton, Falcon Square
Bristow, Ebenezer John, 106, Great Russell Street; Exeter; and Charlotte, Street	J. Crick, Maldon
Cleave, William Cornish, Crediton; and Stanhope Street	F. Broughton, Falcon Square
Cockram, George Woodbury, Tiverton	John Chaplin, Birmingham
Cutler, John Walford, Birmingham; and Calthorpe Street	Thomas Badger, Rotherham
Clough, Benjamin Morley, Bawtry	John Stogdon, Exeter
Coates, Wallington, Stanton Court, near Bristol; and Featherstone Buildings	Messrs. Smith, Crediton
Campbell, James, 45, Lower Stamford Street; and Plymouth	John Loosemore, Tiverton
Cutts, John, jun., 61 George Street, Euston Square; and Chesterfield	T. L. Teale Rendell, Tiverton
Cooper, John, Eliot Place, Blackheath	Thomas Slaney, Birmingham
Colt, George Nathaniel, 33, Southampton Row, Russell Sqr.; Cheltenham; Liverpool; and Chester Place	Frederick H. Cartwright, Bawtry
Duncan, William H. Egelstone, Kennington	P. E. Coates, Stanton Court, near Bristol
Dennis, Thomas John, Maze Pond, Southwark; and Barnstaple	John Edward Elworthy, Davenport
Dashwood, Thomas, jun., 24, Upper Eaton Street; and Sturminster Newton	N. Were, Plymouth
Drake, Thomas Edward, jun., Myddelton Square; and Exeter	John Cutts, sen., Chesterfield
Darnton, Henry Thomas, Ashton-under-Lyne	Samuel Cooper, Henley-upon-Thames
	R. Winterbotham, Cheltenham
	T. Edgcombe Parson, Lincoln's Inn Fields
	Frederick Ouvry, Tokenhouse Yard
	Thomas Hooper Law, Barnstaple
	Thomas Dashwood, sen., Sturminster Newton
	William Dean, Guildford Street
	Thomas E. Drake, Exeter
	Alfred Higginbottom, Ashton-under-Lyne
	Joseph Higginbottom, Ashton-under-Lyne

Dodd, Edward, 63, Charrington St., Somers Town	Thomas Morris, Warwick
Eastham, Richard, 4, Englefield Road, Kingsland; and Blackburn	James Neville, Blackburn
Edmands, Charles Henry, 8, Trevor Square	William Sim, King's Bench Walk
Evans, William, 20, Richmond Road, Islington; and Warrington	John Fitchett Marsh, Warrington
Eagleton, John William, Newark-upon-Trent; Arthur Street; and Belton	T. F. A. Burnaby, Newark-upon-Trent
Edwards, George Halliely, 36, Highbury Place	George Edwards, Halifax
	Samuel Moores, Throgmorton Street
Edmonds, George, 15, Whittall Street, Birmingham, Warwickshire	Edward Wright, Birmingham
Fenwick, John Clerevoulx, Newcastle-upon-Tyne; Queen Street Place; Camberwell Grove; and Stanhope Street	John Fenwick, Newcastle-upon-Tyne
Gant, James Greaves Tetley, Bradford	Hugh Shield, Queen Street, Cheapside
Gannon Charles, Hope Cottages, De Beauvoir Town	J. A. Bushfield, Bradford
Gray, Henry Andrews, 17, Brompton Crescent	Samuel Lepard, Cloak Lane
Gooding, Jonathan Robert, 33, Gower Place, Euston Square; and Norwich	Robert Gray, New Inn
Hill, Thomas Ames, 20, Liverpool St., King's Cross	James Winter, Norwich
Hare, Evan, Putney	H. A. S. Payne, Axbridge, near Wells
Hall, John Elton, 13, Salisbury St., Strand; and Bristol	Evan Morris, Harcourt Buildings
	J. W. R. Hall, Ross
	George Cook, Bristol
	W. W. Smith, Southampton Street
Hawkins, Richard Berens B., Marlborough	Thomas Baverstock Merriman, Marlborough
Hallward, Charles Berners, Swebstone Rectory; and 151, Albany St., Regent's Park	J. T. Ambrose, Mistley
Hemmen, John, Whittlesey; and Old Kent Road	Edward T. Cardale, Bedford Row
Hore, Edward Madge, Dulwich; and Lincoln's Inn Fields	John Peed, Whittlesey
Hartley, John, Bury	James Hore, Lincoln's Inn Fields
Holt, Jonathan, Malmesbury; Coventry; Newgate Street; and High Holborn	C. F. Hore, Lincoln's Inn Fields
	(Not in the notice)
	A. Tucker, Coventry; and Charles Street, Blackfriars' Road
	C. F. Sherriff, Lincoln's Inn Fields
James, John Crymes, Haverfordwest	M. R. James, Haverfordwest
Jones, John Henry, 4, Albert Terrace, St. John's Wood; Duke Street; and Baker Street	
Jarratt, William Otley, Mornington Square; and Driffield	C. H. Smith, Duke Street
Jones, Hugh, Carnarvon	E. D. Conyers, Great Driffield
Johnson, James Henry, 9, Ampton Street, Gray's Inn Road	William Lloyd Roberts, Carnarvon
	William G. Kell, Bedford Row

[This List will be continued in our next.]

TITHE RENT-CHARGE DISTRESS.

SIR.—By the 6 & 7 W. 4, c. 71, s. 85, it is enacted, that whenever any tithe rent-charge shall be in arrear, every part of the land situate in the parish which shall be occupied by the same person who shall be the occupier of the lands on which the rent-charge so in arrear shall be charged, whether so occupied as owner or as tenant under the same landlord under whom he occupies the land in arrear, &c., shall be liable to be distrained upon, &c., &c.

Now, it appears to me, that under this enact-

ment, wherever land is held under different landlords, *separate* distresses ought to be made. It is, however, supposed by some professional gentlemen, that the 5 & 6 Vict. c. 54, s. 18, which provides for a general avowry, renders this unnecessary; but, on referring to the clause, it will be seen that the words are,—“to avow or make recognizance generally that the lands and tenements *whereon such distress was made* were chargeable,” &c. It is certainly exceedingly inconvenient where the party, as is frequently the case, occupies several small lots under different landlords, and often at some distance from each other, to be compelled to

This is the only application in the Common Pleas, all the others are in the Queen's Bench.

make a separate distress in each case. I shall feel much obliged, therefore, if any of your correspondents will state what the practice is on the subject, and, if separate distresses are necessary, whether one previous ten days' notice and service on the person himself off the premises would be sufficient. In case of service on any other person, as wife, or servant, &c., it is presumed that several notices must be served, as they are directed to be served on the premises, or on the person occupying.

The forms given in Mr. C. J. Jones's work on the Recovery of Tithe Rent-Charge appear to me to be much longer and fuller than necessary. It would be a great accommodation to many professional men if some shorter forms could be given.

A SUBSCRIBER.

LEGAL OBITUARY.

1847, Jan. 26.—Daniel Neal Lister, of Gray's Inn, Barrister-at-Law, in the 74th year of his age.

Feb. 12.—Bathurst Hemings, Solicitor, of Raymond Buildings, Gray's Inn. He was admitted on the Roll in Trinity Term, 1822.

Feb. 13.—John Day Blake, late of Clement's Inn, Solicitor, in his 76th year. He was admitted on the Roll in Michaelmas Term, 1791.

Feb. 13.—Sharon Turner, the distinguished Historian, formerly a Solicitor in Red Lion Square. He was in his 79th year. A memoir of this gentleman will shortly be given.

Feb. 14.—William Tidd, of the Inner Temple, Barrister-at-Law, in his 87th year. We shall collect materials for a memoir of this much-respected veteran lawyer.

Feb. 16.—John Daubeny, of Doctors' Commons, I. L. D.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Common Law.

POOR LAW AND MAGISTRATES' CASES.

AFFIDAVITS.

See *Certiorari*.

AFFILIATION ORDER.

1. Where the sessions had refused, on the application of the guardians, to make an order of affiliation, under the 2 & 3 Vict. c. 85: *Held*, that they were, nevertheless, bound to entertain the complaint of the mother, under the 7 & 8 Vict. c. 101, if made within the time limited by that act. *Reg. v. Walker*, 3 D. & L. 131.

2. On an appeal against an order of affiliation the attorney for the respondent gave a written undertaking to admit the due service of the notice of recognizances, the attorney for the appellant undertaking to produce them at the

trial. The order of affiliation bore date the 3rd April, and the sessions were holden upon the 30th: *Held*, that the sessions were justified in finding a due service of the notices. *Reg. v. Justices of Gloucestershire*, 33 L. O. 330.

3. An order in bastardy under the 7 & 8 Vict. c. 101, s. 3, stated that application had been made and summons granted by a justice of the peace "usually acting in" the division in which the mother resided: *Held*, that under the 8 Vict. c. 10, the word "in" was to be taken to be synonymous with the word "for" contained in the forms given in the schedule to that act; and that, consequently, the order showed jurisdiction on the part of the magistrate granting the summons. *Reg. v. Milner*, 3 D. & L. 128.

4. An order of bastardy omitted to state on the face of it, that the application for it had been made within forty days from the service of the summons upon the putative father, (7 & 8 Vict. c. 101, s. 4): *Held*, bad, as not showing jurisdiction on the part of the justices making it. *Reg. v. Rose*, 3 D. & L. 359.

See *Certiorari*; *Notice of Appeal*; *Order of Sessions*; *Quarter Sessions*.

APPEAL.

1. *Entry not on the merits*.—*Estoppel*.—An entry made by a court of quarter sessions on the trial of a parish appeal, that "the order be quashed, not upon the merits, without prejudice to the making of any other order for the removal of the said pauper," does not operate as an estoppel so as to prevent another removal with respect to the same settlement and between the same parishes; and, at the trial of such second appeal, it is not competent for the appellants to give evidence to show that, notwithstanding the entry of the former sessions, the order was quashed on facts which in law affected the merits of the settlement. *The Queen v. The Inhabitants of St. Anne's, Westminster*, 33 L. O. 354.

2. *Sessions practice*.—*Mandamus*.—On application for a mandamus to the sessions to enter continuances and hear an appeal, it appeared from the affidavits that an application to enter an appeal was made on the second day of sessions, and not before, and refused. It not appearing what the practice was, nor that the sessions had refused on any ground except that of practice, this court discharged the rule for a mandamus.

Though it appeared that a question might have arisen, whether the appellants were not precluded by a former appeal which they had entered but had not prosecuted; on which question this court gave no opinion. *Reg. v. Justices of Warwickshire*, 6 Q. B. 750.

See *Notice of Appeal*.

CASE RESERVED.

A case reserved by the quarter sessions for the opinion of this court, and after the *certiorari* has issued, to bring up the order, examination, &c., an application is made to the court to be allowed to take an additional objection to the order, when the case comes on for argument.

Held, that the court would only hear argument on the points reserved by the sessions.

The party, at whose instance a case is granted by the sessions, must either rely on the points so reserved, or abandon the case and rely on any point which may be thought available. *The Queen v. The Inhabitants of St. Anne's, Westminster*, 33 L. O. 305.

CERTIORARI.

1. *Evidence on oath*.—The 8 Vict. c. 10, enacts, that in orders of bastardy it shall be sufficient to follow the form given in the schedule to the act. Form No. 8 in the schedule has a blank left after the words, and we having "heard the evidence of such woman." **Held**, on the matter for *certiorari* to bring up an order in bastardy, for the purpose of being quoted, as not showing that the evidence of the woman was taken on oath, that it was not necessary that such blank should be filled up with the words "on oath" or "on affirmation." *Reg. v. Justices of Cheshire*, 3 D. & L. 337.

Case cited in the judgment: *Reg. v. Wroth and another*, 2 D. & L. 729.

2. *Jurisdiction*.—Where an order of removal is apparently defective on the face of it, as not showing jurisdiction on the part of the justices making it; the parish on whom the order is made, need not appeal to the court of quarter sessions, but may come in the first instance to this court for a *certiorari*. *Reg. v. Blathwayt*, 3 D. & L. 542.

3. *Confirming order*.—Under stat. 5 G. 2, c. 19, s. 2, an order, removed by *certiorari*, is "confirmed" by simply discharging the rule for quashing it. *Reg. v. Inhabitants of Latchford*, 6 Q. B. 567.

4. *Practice in filing affidavits*.—A rule *nisi* having been obtained to quash the return of a *certiorari*, it was provided by the rule, that all affidavits to be used in showing cause against it were to be filed by a certain day. After the expiration of the time so limited, but before the rule was returnable, an application was made on behalf of certain parties, on whom the rule had been served, but who were not directly affected by it, for leave to file affidavits with a view of showing cause against the rule, on the ground that they had only just discovered that they might be affected by the rule being made absolute.

Held, that the application was reasonable, under the circumstances, and one which they had power to grant. *Reg. v. John Keen*, 33 L. O. 285.

5. A notice to justices under the 13 G. 2, c. 18, s. 5, of an intention to move for a *certiorari* "in six days from the giving of this notice, or as soon after as counsel can be heard," is sufficient. *Reg. v. Rose*, 3 D. & L. 359.

Case cited in the judgment: *In re Flounders*, 4 B. & Ad. 865; 1 N. & M. 592.

See *Order of Sessions*.

EVIDENCE.

The respondents may, on the hearing of an appeal, prove their case by a witness not pro-

duced by the removing magistrate; and may omit calling a witness who appeared before the magistrates, though the appellants require it and the witness is in court. *Reg. v. Inhabitants of Yelbertoft*, 6 Q. B. 801.

See *Certiorari; Order of Removal*, 1.

ESTOPPEL.

See *Appeal*, 1.

EXAMINATION.

Whether respondents bound by facts deposited to.—*Confirmation of order.*—*Discharge of rule to quash.*—The examination of a pauper showed that he was born in the appellant parish, and was afterwards bound and served as apprentice, and inhabited under such service, partly in the appellant parish and partly in the respondent parish, and more than forty days in each. The respondents proposed at the sessions to rely on the birth settlement. **Held**, that they were not precluded from so doing by the fact that the examination contained allegations which, if true, showed a subsequent settlement by apprenticeship. *Reg. v. Inhabitants of Latchford*, 6 Q. B. 567.

JURISDICTION OF SESSIONS.

Quashing indictment.—*Questions on a rule to quash an order.*—An order of quarter sessions brought up by *certiorari* appeared to be an order quashing an indictment containing counts for forcible entries, assaults, and a riot. On motion to quash the order, **Held**,

1. That the session, having jurisdiction over the subject-matter of the indictment, had jurisdiction to quash it; and, as to this, it made no difference that the defendants had been held to bail more than twenty days before the sessions, and had given the prosecutor notice of their intention to appear there; stat. 60 G. 3, and 1 G. 4, c. 4, s. 5, not taking away the common law power of a criminal court to deal with an indictment properly before them.

2. That this court, therefore, would not inquire, on this proceeding, whether the indictment was properly quashed; but that the proper way of raising such a question was on writ of error.

3. That this court would not, on such proceeding, allow a discussion as to the motives upon which the quarter sessions acted.

Rule *nisi* for quashing the order of sessions discharged. *Reg. v. Wilson*, 6 Q. B. 620.

Cases cited in the judgment: *Rex v. Roysted*, 1 Kenyon, 255; *Rex v. Spton*, 7 T. R. 373; *Rex v. Justices of the W. Riding of Yorkshire*, 7 T. R. 467.

2. *Order of removal*.—Where an order of removal was executed on the 27th of March, and the next Easter sessions were held on the 9th of April, consequently, less than fourteen days after the removal, and the appellants took no notice of those sessions, but entered and respite their appeal *ex parte* at the Midsummer sessions, and gave the regular notice, &c., for the Michaelmas sessions, at which sessions the appeal was entered and determined. **Held**, that the sessions had jurisdiction over the appeal to

hear and determine it, and that the appellants were not bound to have entered and respited at the Easter sessions, or to have given notice of appeal for the Midsummer Sessions.

The 9 G. 1, c. 7, s. 8, does not apply to the first sessions after the removal, but the first practicable sessions. *Reg. v. Justices of Surrey*, 3 D. & L. 343.

Cases cited in the judgment: *Rex v. Justices of Essex*, 1 B. & A. 210; *Rex v. Thackwell*, 4 B. & C. 62; 6 D. & R. 61; *Rex v. Justices of Wilts*, 13 East, 352; 8 B. & C. 380; *Reg. v. Justices of Suffolk*, 8 Dowl. 618; *Rex v. Justices of Monmouthshire*, 3 Dowl. 306.

See *Certiorari*, 2; *Order of removal*, 1.

MAGISTRATES.

1. *Appeal.*—*Hearing by magistrates having an interest.*—If any one of the magistrates having a case at sessions be interested in the result, the court is improperly constituted, and an order made in the case will be quashed on *certiorari*. It is no answer to the objection, that there was a majority in favour of the decision, without reckoning the vote of the interested party. Nor that the interested party withdrew before the decision, if he appear to have joined in discussing the matter with the other magistrates.

On appeal against an order, under stat. 4 & 5 Vict. c. 59, s. 1, directing the surveyor of the highways to pay the commissioners of a turnpike trust, a sum of money to be laid out in the actual repairs of the turnpike road, the justices making such orders are interested parties.

So is a magistrate to whom money is owing, which is secured upon the turnpike tolls. *Reg. v. Justices of Hertfordshire*, 6 Q. B. 753.

Case cited in the judgment: *Reg. v. Cheltenham Commissioners*, 1 Q. B. 467.

2. *Time within which an action may be commenced.*—The right of action against a police magistrate, under the 2 & 3 Vict. c. 71, terminates at the end of three months from the time the act was committed; and two magistrates of the county of Middlesex, acting under the 3 & 4 Vict. c. 84, which confers on them the privileges of a magistrate of the police courts, are entitled to the privilege of having the right of action limited to three months.

The Metropolitan Police Acts are not local and personal acts, or of a local and personal nature within the meaning of the 5 & 6 Vict. c. 97, s. 5. *Barnett v. Cox and another*, 33 L. O. 212.

MAINTENANCE.

See *Mandamus*, 1.

MANDAMUS.

1. *Cost of maintenance under the 9 G. 4. c. 40.*—On the 13th of November, 1843, an order was made by two justices of the county of Radnor, under the 9 Geo. 4, c. 40, for the removal of an insane pauper to an asylum in Shrewsbury. On the 30th of November an order was made by the same justices, adjudging the pauper to be settled in H., and directed that parish to pay 10s. a week for the support

of the pauper in the asylum. H. appealed against this order, and the sessions for the county of Radnor, on the 11th of April, 1844, confirmed the order, subject to a case which came on for argument on the 31st of January last, when this court quashed the order of sessions.

The court refused a mandamus to compel the justices of the county of Radnor to make an order on the county treasurer to repay the parish of H. the money they had expended in support of the pauper in the asylum from April, 1844, to January, 1846. *The Queen v. The Justices of Radnor*, 33 L. O. 19.

2. *Inspection of appointment of overseers.*—The court will not grant a mandamus for a ratepayer of a township to inspect the appointment of overseers of the poor of that township. *The Queen v. Harrison and others*, 33 L. O. 165.

3. *Return.*—A poor-rate was made for the parish of B., which was abandoned. A second rate was made, to which several objections were taken by G., a rated inhabitant of the parish, which were not allowed to prevail. A writ of mandamus afterwards issued to the justices to grant a distress warrant against G. for his share of the rate. The court refused an application made on behalf of G., under the statutes 1 W. 4, c. 21, s. 4, and 1 & 2 W. 4, c. 58, s. 8, that he might be permitted to join with the justices in framing a return to the writ of mandamus. *The Queen v. Check and another*, 33 L. O. 329.

And see *Appeal*, 2; *Order of Removal*, 2.

MERITS.

See *Appeal*, 1.

MISDESCRIPTION.

See *Order of Removal*, 2.

NOTICE OF APPEAL.

1. Where by the practice of the sessions 28 days' notice of trial was required to be given in the case of respited appeals, and where that notice had not been given, and the sessions therefore refused to hear the appeal, and confirmed the order of removal: *Held*, that the practice was so unreasonable as to induce this court to grant a mandamus commanding the sessions to enter continuances and hear the appeal.

The quarter sessions are the judges of their own rules of practice, and this court will not interfere with their determinations respecting them, unless the rules on which they have acted are so unreasonable as to be illegal. *Reg. v. Justices of Montgomeryshire*, 3 D. & L. 119.

Cases cited in the judgment: *Rex v. Justices of Wiltshire*, 10 East, 404; *Rex v. Justices of Monmouthshire*, 3 Dowl. 306; *Rex v. Justices of Lancashire*, 7 B. & C. 691; *Rex v. Justices of the West Riding of Yorkshire*, 5 B. & Ad. 667.

2. A notice of appeal against an order of removal beginning, "We the undersigned, being a majority of the churchwardens and overseers of the parish of," &c., and signed by one churchwarden and four overseers, (there being six altogether in the parish,) is sufficient, without

stating that they were the majority at a meeting duly convened. *Reg. v. Justices of the West Riding of Yorkshire*, 3 D. & L. 152.

3. A notice of appeal against an order of removal, was in the following terms:—"Take notice, that we being a majority and acting for and on behalf of the churchwardens and overseers of," &c., "and that the ground of our appeal," &c., and was signed by one person, "churchwarden of," &c., and by four persons, "overseers of," &c. It appeared that there were two churchwardens and four overseers of the appellants parish, and no more. The quarter sessions having decided that the notice was insufficient, and refused to hear the appeal: *Held*, that the notice was good, and sufficiently showing that it was an appeal by and on behalf of the whole body of parish officers, but that the decision of the quarter sessions on the point was a decision on a preliminary objection, and therefore, that the court would grant a mandamus, commanding them to enter continuances and hear the appeal. *Reg. v. Justices of Surrey*, 3 D. & L. 573.

Cases cited in the judgment: *Rex v. Justices of Gloucestershire*, 1 B. & Ad. 1; *Reg. v. Justices of Kent*, 2 Q. B. 686; 2 G. & D. 152.

4. The 8 & 9 Vict. c. 10, s. 3, requires notice of the entering into recognizances to try a bastardy appeal, to be "forthwith" given to the mother of the child, and it also provides, that the sending such notice by post shall be sufficient: *Held*, that the sessions were right in refusing to hear an appeal, where an interval of seventeen days had been suffered to elapse between the entering into the recognizances and serving the notice on the mother, although it was shown that the delay that had occurred, was owing solely to the appellant having sought to effect a personal service on the mother. *Lowe, ex parte*, 3 D. & L. 737.

5. The 7 & 8 Vict. c. 101, s. 4, requires notice of appeal against an order in bastardy to be given within 24 hours "after the adjudication and making of any such order." On an appeal coming on to be heard, it appeared that the order, a copy of which was served on the putative father, was dated on the 24th of June, and that the service on the putative father was on the 27th June, who, within 24 hours afterwards, gave notice of appeal. It was objected that this notice was too late; whereupon the appellants offered to prove that the order was not drawn up or signed till the 27th of June, and that the notice was consequently in time: *Held*, that the sessions acted wrongly in refusing to receive this evidence, and the court granted a mandamus to compel them to do so. *Reg. v. Justices of Flintshire*, 3 D. & L. 537.

See *Affiliation Order; Quarter Sessions*.

ORDER OF REMOVAL.

1. An order of removal was drawn up in the following form:—"Borough of King's Lynn, in the county of Norfolk;" (in the margin,) "Upon complaint of the churchwardens and overseers of the poor of the parish of St. Mar-

garet, in the borough of King's Lynn aforesaid, unto us, whose hands and seals are hereunto set, two of her Majesty's justices of the peace in and for the said borough," &c., that *S. W.* and her six children, inhabitants of the said parish, "are now actually chargeable to the said parish; we the said justices, upon due proof made thereof, as well upon the examination of the said *S. W.* of *S. H.* and of *J. H.*, upon oath as otherwise, and likewise, upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge that the lawful settlement of them the said *S. W.* and her children is in," &c. The order concluded in the usual form, "Given," &c., without stating where it was made. *Held*, that it sufficiently appeared upon the face of this order:—

1st, That the justices were acting within their jurisdiction.

2ndly, That the evidence upon which the justices had proceeded was legal evidence, and that the words "as otherwise" could not be intended to mean evidence not upon oath.

3rdly, That the adjudication of the settlement was made at the same time and place as, and upon, the hearing of the evidence. *Reg. v. Recorder of King's Lynn*, 3 D. & L. 725.

Cases cited in the judgment: *Reg. v. Rotherham*, 3 Q. B. 776; 2 G. & D. 523; *Rex v. Luffe*, 8 East, 193; *Reg. v. Wroth*, 2 D. & L. 729.

2. *Mandamus*.—*Misdescription*.—Where the name of one of the justices signing an order of removal was so illegibly written in the copy of the order sent to the appellants parish, (although legible enough in the copy of the examinations,) that the parties gave their notice of appeal as against the order of *A. B.* and *Jonah Walter*, instead of *A. B.* and *Josiah Wilson*, (the real name of the justice), and the appeal was entered at the sessions as against the order of *A. B.* and *John Walter*; and the sessions refused to entertain the appeal, on the ground of the jurisdiction, this court granted a mandamus compelling them to enter continuances and hear the appeal. *Reg. v. Justices of Middlesex*, 3 D. & L. 745.

OVERSEERS.

See *Mandamus*, 2.

RATEABLE PROPERTY.

Trusts of market, after payment of debts and expenses, for poor inhabitants of another parish.

—Stat. 9 G. 3, c. 44, empowered trustees to purchase certain lands, &c., in the town of Taunton, and convert them into a market-place, and vested the lands, &c., and all the buildings, &c., to be built thereupon, and the rents and profits, in the trustees and their successors, in trust, out of the first money to be raised under the act, to pay the costs of obtaining the act, all debts to be incurred by the purchase of the site and erection of the market, the expenses of lighting certain streets in the town, the expenses of purchasing the stalls, &c., in the then present market, and also certain mortgages and the interest thereof. It was enacted that, after

the discharge of the same, and of all debts on account of the market, &c., the market, &c., should remain in the trustees in trust as an estate for the use and benefit of the parish of *M.*, in Taunton, and should and might be applied by the trustees to the clothing, educating, and placing out apprentices of so many of the children of the poor inhabitants of *M.* as the trustees should from time to time direct. It was further provided that the share and proportion which the several grounds, &c., to be vested in the trustees by virtue of the act, were charged with to the land-tax, and church, and poor-rates, in the year 1768, according to the rents of the same as they were then rated, should be forever paid by the trustees to the proper officers in lieu of all taxes, rates or impositions whatever. The trustees erected a market under this act on the lands specified, all of which were in the said parish of *M.* A subsequent act, 57 G. 3, c. 65, authorized the trustees to purchase additional ground within 1,000 yards of the then present market, and appropriate it for the purposes of the market, and enacted that the same, when so set out, should be deemed and taken as part of the then present market-place to all intents and purposes. It further provided, that the former act, and all and every the authorities, powers, provisions, regulations, clauses, matters, and things therein contained, except such as were thereby varied, &c., or as were repugnant to, or otherwise provided for, by that act, should be in full force and effect, and should extend to, and be practised, applied, &c., for effecting the purposes of that act, as fully and effectually, to all intents and purposes, as if all such authorities, &c., were repeated and re-enacted in the body of that act with relation thereto. This act contained no provision affecting the subject of rating the additions thereby authorized, and no enactment in form repugnant or referring to the enactments in the former act on the subject of rating the market-place.

Under the second act the trustees made additions to the market-place, within the prescribed distance, but situate within the parish of *B.*; they occupied these additions themselves, and collected tolls in respect thereof. There was never any surplus revenue after paying the annual expenses and interest. The parish of *B.* rated the trustees to the poor rate in respect of these additions at the full rateable value for the time being, according to stat. 6 & 7 W. 4, c. 96. The trustees having appealed, no evidence was given on the trial of the proportion at which the additional site was rated in 1768; but it was then shown that in 1817 it was rated at a lower rate than in the rate appealed against. *Held*, that the general words of incorporation in the second act must have such a meaning as would stand with reason and right, and must therefore be limited so as not to incorporate the provision in the first act as to the proportion of rating. *Held*, also, that notwithstanding the special purposes to which the revenue was applied, the trustees were liable to poor-rate in *B.* for the addition to the

market-place situate in that parish, and that the amount at which they were rated was correct. *Reg. v. Badcock*, 6 Q. B. 787.

Cases cited in the judgment: *Rex v. Monmouthshire Canal Company*, 3 A. & E. 619, 635; *Rex v. Justices of Surrey*, 2 T. R. 504; *Rex v. Liverpool*, 7 B. & C. 61; *Reg. v. Mayor, &c. of Liverpool*, 9 A. & E. 434; *Reg. v. Exminster*, 12 A. & E. 2; *Governors of Bristol Poor v. Wait*, 5 A. & E. 1; *Reg. v. Wallingford Union*, 10 A. & E. 259.

REMOVAL.

Maternal settlement. — Without showing inquiry as to father's settlement. — Pauper was removed to his mother's maiden settlement in *Y.* His father, in the examination stated, that he believed he himself was born in London, but had never heard in what parish, and had never done any act to gain a settlement in his own right: *Held*, that on proof of the mother's settlement in *Y.*, the justices might remove the pauper thither, and that, on appeal against the removal, the respondents, at sessions, might rely *prima facie* on the mother's maiden settlement, without proving any inquiry made as to the settlement of the father.

The mother's brother, in the examination stated, that she was born at *Y.*, and was the person mentioned in the certificate of baptism, which was produced, and at the death of which he was less than four years old: *Held* to be evidence, on which the removing magistrates might act, of the mother's birth in *Y.* *Reg. v. Inhabitants of Yelvertoft*, 6 Q. B. 801.

Cases cited in the judgment: *Rex v. Harberton*, 13 East, 311; *Reg. v. Leeds*, 5 Q. B. 916; *Rex v. St. Mary, Leicester*, 3 A. & E. 644; *Rex v. St. Mary, Beverley*, 1 B. & Ad. 201; *Rex v. St. Matthew, Bertham Green, Burr.* S. C. 485.

See *Order of Removal*.

SETTLEMENT.

1. *Apprenticeship. — Patent and latent ambiguity. — Extrinsic evidence to explain deed. — Signature of wrong name. —* To prove the settlement by apprenticeship of Joseph Beaumont, an indenture was put in, dated, and purporting to be between Joseph Roberts of one part, and John Beaumont of the other. It was very inaccurately worded and spelt. It witnessed "that the said John Beaumont hath, of his own free will, and with the consent of and by his father's, John Beaumont, has put and bound himself apprentice to and with the said Joseph Roberts, and with him after the manner of an apprentice, to dwell, remain, and serve, from the date hereof, for, during and untill the term of his attain age 21, thence following be fully completed and ended; during which term "the said apprentice his said master shall serve," &c. "And the said Joseph Roberts" doth covenant with "the said Joseph Beaumont, apprentice, "to teach him," &c., to pay him 3s. "yearly and every year during his apprenticeship." In witness whereof, the parties above named to these present indentures have set their hands and seals." And

at the bottom followed—"Joseph (L. S.) Roberts: Joseph (L. S.) Beaumont." Joseph Beaumont gave evidence that he was bound by the above indenture, and served under it: *Held*,

1. That it appeared from the deed that the John Beaumont, party thereto, was the Joseph Beaumont therein named apprentice.

2. That extrinsic evidence might be given that the person so meant was the pauper, and that he had executed the indenture.

3. That the meaning of the parties sufficiently appeared to be that the apprentice should be bound until he attained the age of 21.

4. That this, combined with the date of the indenture, might by extrinsic evidence of the pauper's age, be made sufficiently certain as to the term for which he became bound.

5. That the sessions, upon the above evidence, were justified in finding a settlement by apprenticeship. *The Queen v. Woodale, Inhabitants of*, 6 Q. B. 549.

Cases cited in the judgment: *Williams v. Bryant*, 5 M. & W. 447; *Maby v. Shepherd*, Cro. Jac. 640; *Hickman v. Shotbolt*, 3 Dyer, 279, b.

2. *Residence.—Apprentice.*—The appellants relied upon a settlement in the respondent parish, and proved that, on the last night of the service, the pauper slept in that parish: *Held*, that to establish this settlement, they must prove the apprenticeship, and could not treat it as admitted by the respondents, though the latter had set examinations in which it was alleged, and it had not been traversed by the grounds of appeal. *Reg. v. Inhabitants of Latchford*, 6 Q. B. 567.

3. *Occupation under yearly hiring.—Examinations.*—A pauper was removed to S. on the examination of P. and A. P. deposed, that on the 22nd July, 1839, he let to pauper's husband a house in S., "at the rent of 10l. per year," that the husband "occupied the house until 22nd July, 1841," and paid P. "the whole of the rent during that time." A. deposed, that the husband went in July, 1839, to the house, and "resided in that house until March, 1842."

Held, (dissentiente Coleridge, J.) that the sessions were not entitled to affirm the order of removal, the examinations not showing that the house had been occupied for a year under a yearly hiring within stat. 1 W. 4, c. 18, s. 1. *Reg. v. Inhabitants of St. Sepulchre's*, 6 Q. B. 580.

Case cited in the judgment: *Reg. v. Recorder of Pontefract*, 2 Q. B. 543.

4. *Renting a tenement.—What must be "separate and distinct."*—In stat. 6 G. 4, c. 57, s. 2, the words "separate and distinct" apply to "dwelling-house and building," but not "to land."

Therefore, a settlement may be gained under that clause by one of two persons holding land jointly at a rent of 76l., paid by them in equal proportions, if the renting be in all other respects conformable to the statute. *Reg. v. Inhabitants of St. Lawrence, Appleby*, 6 Q. B. 842.

WARRANT OF COMMITMENT.

A warrant of commitment for non-payment of a poor-rate should show an adjudication by the same justices before whom the complaint is heard. *Ramsden, in re*, 3 D. & L. 748.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Matthews v. Chichester and others. Dec. 21st, 1846.

NEW ORDERS (NO. 46).—INDULGENCE.—SETTING DOWN DEMURRER.

Unless special grounds for the required indulgence are shewn, the court will not depart from its General Orders; nor grant leave to a plaintiff to amend upon payment of 20s. costs to the demurring party, where a demurrer to the whole bill is not set down for argument within twelve days after the filing thereof.

Mr. K. Parker, for the defendant Chichester, stated, that this was a motion to discharge Vice-Chancellor Wigram's order (17th Nov., 1846,) to restore the plaintiff's bill within four weeks, upon payment of 20s. costs to this defendant, and without payment of costs to the others, and to vary his order of the 2nd of Nov. The bill was filed and subpoena served on the 8th June. This defendant, who appeared on the 16th of the same month, filed a demurrer to the whole bill for want of equity and parties on the 6th of July, and pursuant to the 23rd Order of October, 1842, intended to give the plaintiff notice thereof on the same day. For this purpose a letter was posted before 4 o'clock, which in the ordinary course of delivery would reach the office of the plaintiff's solicitor about a quarter past six in the evening. The latter deposed that he left his office at six o'clock, at which time the letter had not arrived, but that it was given to him with his other letters at nine o'clock the next morning, on which day, (July 7th, being the last day of filing a demurrer,) another notice was duly given by the defendant. On the 20th of July the plaintiff presented a petition to the Master of the Rolls, stating the filing of the bill and of the demurrer on the 6th of July, (thereby affording a recognition that notice of it had been received,) but that it had not been set down, and obtained an order for leave to amend. This order was served upon the defendant on the 21st of July, with 20s. costs, whereas by the 46th of the General Orders of May, 1845, if the plaintiff does not within twelve days after the filing of a demurrer to the whole bill, serve an order for leave to amend the bill, the demurrer is to be held sufficient to the same extent and for the same purposes, and the plaintiff is to pay to the demurring party the same costs as in the case of a demurrer to the whole

bill allowed upon argument. This order with the 20s. was returned by the defendant, and leave to take the bill off the file or amend was granted on the 23rd of July. A subsequent application by the plaintiff to take the demurrer off the file for irregularity in the service by the post, or for leave to amend, was refused by Vice-Chancellor *Wigram*, upon the grounds that another order for leave to amend was then in existence, viz., that of the Master of the Rolls, which would expire on the 3rd of the following August. On the 2nd of November his Honour ordered that the bill might be restored (it being then out of court) as to this defendant, and amended within four weeks.

Mr. *K. Parker* then contended, that as there is no order upon which an order to restore a bill when once out of court can be founded, the court has no jurisdiction to make such, neither could a plaintiff who had submitted to a demurrer for want of equity make such an application. Another ground was, that the 46th of the New Orders gave the defendant all the costs of the demurrer, whereas that of Vice-Chancellor *Wigram* gave only 20s., and thus deprived him of the benefit of the whole costs. A third objection was, that the plaintiff had shown no special ground for the indulgence which he sought, except the error of defendant in sending the notice by the post. He cited *Calvert v. Gandy*, 1 Phillips, 518; and *Lloyd v. Loaring*, 6 Ves. 773.

Mr. *Willcock* followed on the same side, and urged that the court had no power to vary the Orders of May, 1845, which are of the same effect as an act of parliament; that no cause of materiality had been shown by the plaintiff; and that there was nothing whereby the defendant could be deprived of the costs of his demurrer, as the plaintiff admitted in his petition at the Rolls that notice of it had been served on the 6th July.

Mr. *Romilly*, in support of the order, submitted that the court had the requisite jurisdiction from the 8 & 9 Vict. c. 105, s. 2; that an order not duly served was a mere nullity; *Dalton v. Hayter*, 9 Jur. 674; 1 Phill. 515; and that with respect to the right of the plaintiff to make the application, the defendant having appeared and demurred to an amended bill for want of equity and parties, the case of *Wellesley v. Wellesley*, 4 M. & C. 554, was in point. The court below had thought that as irregularities had been committed on both sides, justice would be best consulted by granting the indulgence to the plaintiff.

Mr. *Grove* appeared with Mr. *Romilly*, and cited *Hannam v. South London Waterworks Company*, 2 Mer. 61.

The Lord Chancellor remarked that it was perfectly true that the court might depart from its General Orders for the purpose of granting an indulgence to promote justice, but then it must have special grounds for such departure. None appeared in the present case. The demurrer was regular, and was so treated by the Vice-Chancellor, from whom there was no appeal on that point; and is in fact so con-

sidered by the plaintiff, who assumes that his bill is in consequence out of court. The defendant is therefore entitled to the benefit, whatever it may be, of having the demurrer allowed, and the order appealed against must be discharged.

Rolls Court.

In re Harrison. Jan. 28, 1847.

TAXATION OF COSTS.—CONSTRUCTION OF 6 & 7 VICT. C. 73, s. .

Payment of a bill of costs under protest, or the circumstance of there being overcharges, is not alone sufficient to induce the court to order a taxation after payment; nor is it a sufficient ground that the bill contains charges which would not be allowed between a mortgagor and mortgagee, if they are proper charges as against the mortgagee.

THIS was a petition by the trustee of a mortgagor to tax the bill of costs of the mortgagee's solicitor, under the following circumstances:—The mortgagor had executed two mortgages on the property mentioned in the petition, and being desirous of effecting a sale without noticing the mortgagees, it was arranged that on a purchaser being found the mortgagees should reconvey to the mortgagor, who had since died, so that he might be in a situation to make a clear title. A sale accordingly took place; but on application being made to the solicitor to the mortgagees for a reconveyance he refused to allow them to execute until his bill of costs was paid. The bill was accordingly paid under protest, and on this ground, as well as because the bill contained objectionable items and overcharges, the present petition was presented. Some of the items were objected to on the ground of their being improper charges as between a mortgagor and mortgagee, although it was admitted they would be allowed as between a mortgagee and his solicitor.

Mr. *Roupe*ll for the petitioner.

Mr. *Kindersley* and Mr. *Glasse* for the respondents.

The Master of the Rolls said, that it was a great mistake to suppose that a protest at the time of payment was alone sufficient to give the right to tax. Protests went for nothing, unless there was some other special circumstance, as want of opportunity to examine the bill, which was not the case here. It was also an error to suppose that the mortgagor was entitled to have the bill of the mortgagee's solicitor taxed, as between himself and the solicitor, on the principle that everything was to be struck off which the mortgagee could not charge against the mortgagor in the account between them. That there were such charges was not a ground for taxing the bill, if the charges were proper as between the solicitor and mortgagee. There was therefore no ground for this petition but that of overcharges, and that alone was not sufficient to make a bill taxable after payment. Petition dismissed with costs.

Vice-Chancellor of England.

Vernon v. Rudd. Jan. 29th, 1847.

CREDITOR'S SUIT.—PROOF OF DEBT.

In order to found a decree in a creditor's suit affecting real estate it is essential that the plaintiff's debt should be proved by interrogatories before the Examiner.

THIS was a suit instituted by the plaintiff on behalf of himself and all other the creditors of the testator in the pleadings mentioned against his executor and heir at law, the latter being an infant, and prayed the usual account of the personal estate, and also an account of the real estate of the testator, and of the rents and profits of the real estate received by the defendant, the executor. The plaintiff's debt was admitted by the answer of the executor, but no proof had been gone into in support of it.

Mr. *Stuart*, for the plaintiff, asked for a decree directing the accounts prayed by the bill.

Mr. *Bird* and Mr. *Taylor* for the other parties.

The Vice-Chancellor said, that as the debt had not been proved, no decree could be made affecting the testator's real estate, and the reference must therefore be confined to taking accounts of the personal estate.

Mr. *Stuart* submitted, that as the Master would be directed to take an account of all debts, the plaintiff's debt would necessarily be established before the Master; but

The Vice-Chancellor said, that was not sufficient; the debt must be proved in order to found a decree affecting the estate of an infant heir. The plaintiff might, however, have leave to exhibit an interrogatory for the purpose.

Vice-Chancellor Knight Bruce.

Coombe v. Chapman. Hilary Term, 1847.

11 GEO. 4, AND 1 W. 4, C. 47.—CONVEYANCE BY INFANT.

Order for a conveyance by an infant, without a reference to the Master, upon petition by a purchaser.

Mr. *Shapter* appeared upon a petition praying that an infant devisee of freehold property might be ordered to convey the same to the petitioner, (the purchaser,) under the statutes 11 Geo. 4, and 1 W. 4, c. 47, without any reference to the Master. The suit was for the administration of the testator.

Sir J. L. Knight Bruce, V. C., said, he should make the order without any reference to the Master, as it was quite unnecessary that in such a case there should be any previous inquiry.

Armstrong v. Stocken. Dec. 11th, 1846.

PRACTICE.—PAYMENT OF MONEY TO SOLICITOR.

The sum of 69l. stock and 8l. cash stood to the account of a certain party who was resident abroad; and on an application on

his behalf, the money was paid to his solicitor, the solicitor and another undertaking that the same should be properly applied.

THE petition in this case was presented by a party entitled to 69l. 3 per cent. consols and 8l. cash, standing in the name of the Accountant-General of the court, to which sums the petitioner became entitled on his attaining the age of 21 years. He being resident at Honduras, the petition prayed that the sums might be paid to his solicitor, and in support of the petition a letter from the petitioner was produced in which he expressed his desire that the money should be so paid.

Roundell Palmer for the petition.

His Honour. I will make the order upon the letter making the request being entered, and upon the solicitor and one other party giving an undertaking that the money shall be properly applied.

The order was afterwards made.

Queen's Bench.

(Before the Four Judges.)

Newton v. Boodle and others. Hilary Term, 1847.

MARRIED WOMAN.—ARREST UNDER CA. SA.

A married woman may be arrested under a writ of ca. sa. for costs incurred in an action in which she is joined with her husband on the record.

A. and wife brought an action against B. for slander of the wife, verdict for the defendant, and judgment for the costs, under which A. and his wife were arrested. The wife was afterwards discharged, and A. brought an action on the case against the defendant and his attorney for the arrest of his wife, and the defendants in their plea set out the proceedings in the former action.

The plea was held good on general demurrer.

AN action was brought by the plaintiff and wife against Rowe for slander of the wife, and a verdict found for the defendant. Judgment was awarded for costs, which not being paid, a *capias ad satisfaciendum* issued, and the plaintiff and wife were arrested. Upon application to a judge at chambers, the wife of the plaintiff was afterwards discharged. The present action on the case was then brought by the plaintiff against the defendant, the attorney in the former action, Rowe, and another, for the injury done to him in the arrest of his wife and the disbursements he was compelled to make in order to obtain her discharge. The defendants severed in their pleadings, and the defendant in his plea justified as the attorney, and set out the proceedings in the former action, the verdict, judgment, and subsequent arrest under the writ of *ca. sa.* To this plea there was a general demurrer and joinder.

Mr. *Atherton* for the plaintiff contended, that in cases where the wife has not contributed to the cause of action, and is only joined with her

husband on the record for conformity with technical rules, that in such a case she is privileged from arrest. In support of this proposition he relied on a passage from Blackstone's Commentaries,^a where it is said, "if judgment be recovered against a husband and wife for the contract, nay, even for the misbehaviour of the wife during her coverture, the *capias* shall issue against the husband only, which is one of the many great privileges of English wives." The writ of *ca. sa.* and subsequent proceedings are irregular and void. *Cassida v. Stewart*,^b and other authorities were cited.

Cowling, for the defendant, cited *Holyday v. Pitt*,^c *Digby v. Alexander*,^d *Finch v. Duddin*,^e *Langstaff v. Rain*,^f *Sparkes v. Bell*,^g

Mr. Atherton was heard in reply.

Lord Denman, C. J. This case has been very fully and ably argued, and we do not entertain any doubt upon it. The question is, whether within the statute 23 Henry 8, this writ has been properly issued against the husband and wife. The statute requires that the same process should issue for costs against plaintiffs who had become liable to pay them as had theretofore been issued against defendants. Mr. Atherton says, by a sort of literal construction in favour of the wife, that in certain particulars this requirement of the statute cannot be carried into full effect; that it has nothing to do with husband and wife as co-plaintiffs or co-defendants. But I am of opinion that it applies to all the opposing parties in an action, whoever they are. Then the question arises, whether at common law this writ should be issued against the wife sued with the husband when the verdict was against them. On this subject certain old authorities have been cited. Mr. Justice Blackstone has expressed an opinion, but all doubt is entirely removed on examining the authorities. An anonymous case^h is cited as an authority of this kind. When we look at that case nothing can be more clear or satisfactory than that it is not to be relied on for the purpose for which it is cited. The case contradicts itself. There it appeared to be known to the court that the wife alone had been guilty of the battery, yet both husband and wife were found guilty. But it is extraordinary that Mr. Justice Blackstone should have overlooked the case of *Mayo v. Cogshill*,ⁱ in the same volume; and to the case of *Anderson v. Roberts*,^j which he himself reported. So that at least there is authority against authority; but the doctrine laid down by the cases I have cited appears to me the more rational. It appears to me that though the court will interfere to discharge a married woman arrested on mesne process, it will not interfere, merely on the ground that she is a married woman, to discharge her from arrest

in execution. And it has been laid down in the Exchequer,^k and, as I think, correctly, that the practice to discharge from arrest on mesne process was introduced by the feeling of humanity of the courts; but even that feeling will not warrant the interference in arrests on execution.

The courts have said that they will not discharge a wife where she has separate property of her own. It would not be just to do so. The property may not be directly within her control; it may be vested in trustees, but vested in them for her use and benefit; and till she uses it as she ought, she shall not have her liberty. But it does not follow from this that where she has no property she is to be discharged. The question is, whether she is liable to be taken? On this point there are some very early cases. Some of them are to be found in Rolles's Abridgment.^l Two cases have been referred to which are adverse to each other. My brother Pattenon has asked, but has received no answer to the question, why it is less the act of the wife to oust a plaintiff of his property than to commit an assault and battery. In the latter case the wife was taken: that shows that she was liable to be taken in the other case, for there can be no difference in the liability.

It appears to me that there is a reasonable principle on which it might be said that the law would not allow the wife to be taken at all, and that is, that the husband is supposed to have entire control over the acts of the wife. He may prevent her from bringing an action, or he may put an end to it when it is brought. But that doctrine would go further than saying that the execution against her should be set aside; it would go the full length of saying that she has not anything to do with it. But there is no person whatever who says that. Her interest is distinct from her husband's;—it is kept alive;—she may have damages and costs, and if her husband should die in the course of the action, her remedy would still survive. There is a kind of mutuality between the wife and the adverse party: the husband protects her interest during his life, and it survives her after his death.

Without entering into any consideration of the rationale of this matter more than is necessary, we may say that it is clear that the books recognise the right of arresting the wife, and most particularly it is recognised in some of the cases which have been brought as proof to the contrary. The wife has frequently been arrested on mesne process and brought before a court to be bailed. How could she be required to be bailed if there was no legal right to arrest her. Such cases are no proof of the illegality, but of the legality of the arrest. Other cases produced for the same purpose admit of the same answer.

When we talk of the "meritorious cause of action" we use a phrase, one of that general

^a 3 vol. 414.

^b 2 Man. & Gr. 437.

^c 3 Stra. 985.

^d 9 Bing. 412.

^e 2 Stra. 1237.

^f 1 Wilson, 149.

^g 3 Bar. & Cross. 1.

^h Cro. Car. 513.

ⁱ Cro. Car. 407.

^j Sir W. Bl. 720.

^k *Banin v. Jones*, 3 Dowl. & Lownd. 667.

^l 1 Roll. Abr. 220, 221.

kind of which there are many in the law; it is not that there is any merit in the wife in bringing the action, but it is that she is the legal cause of the action. It is impossible for any one to enter into the consideration of these circumstances; for in a case in which the wife is the complaining party she may have brought on herself by her own reprehensible conduct the very treatment of which she complains. It is sufficient for the law to lay down general rules; and if the wife is a culpable party, or, as failing in a suit which she ought not to have instituted, becomes liable to costs, they may be enforced against her.

We have no kind of doubt upon this case, and we should not be justified in introducing into the minds of the profession any degree of doubt by hesitating to express our opinion upon it.

Patteson, Coleridge, and Wightman, J.'s, concurred.

Judgment for the defendant.

Court of Review.

Ex parte Henbury, re Carendish. Feb. 2nd, 1847.

PRACTICE.—COSTS.—FEES UNDER 1 & 2 W. 4, c. 56.

*Where a bankrupt had obtained his certificate, and the fees of the official assignee and of the messenger had been paid, but no creditors' assignee had been chosen, the solicitor to the fiat had a bill of costs, and applied that the same might be paid out of a sum of money standing to the credit of the bankrupt's estate. Held, that the fees of 10*l.* and 20*l.* directed by the stat. 1 & 2 W. 4, c. 56, were payable before the solicitor's bill was paid, and the petition was dismissed.*

Forster applied to the court in support of a petition praying for payment of the taxed costs of the petitioner, the solicitor to the fiat, out of the sum of 27*l.* standing in the name of the Accountant in Bankruptcy to the credit of the bankrupt's estate. The fees of 20*l.* and 10*l.* directed by the statute had not been paid as no assignees had been chosen, nor was it likely that such choice would ever be made, and those fees were not payable till after such choice. In November, 1846, the bankrupt obtained his certificate, and the petitioner had not received any costs, but the fees to the official assignee and of the messenger had been paid.

The Chief Judge said he had been informed by Mr. Ayrton, the Registrar, that the Lord Chancellor had intimated an opinion that the solicitor's bill was not payable out of the estate until payment had been made of the fees in question. His Honour's opinion had always been, that as the language of the act was obscure, a fiscal regulation in favour of the public ought not to have effect given to it to the detriment of a solicitor to the fiat. As, however, the head of the court had intimated such an opinion, this court was bound by it, and he

should therefore dismiss the petition, and the matter, if the petitioner thought fit, could be brought under the notice of the Lord Chancellor.*

CIRCUITS OF THE COMMISSIONERS.

FOR THE RELIEF OF

INSOLVENT DEBTORS.

Summer Circuits, 1847.

SOUTHERN CIRCUIT.

Henry Revell Reynolds, Esq. Chief Commissioner.

Berkshire, at Reading, Tuesday, June 22.
Oxfordshire, at Oxford, Thursday, June 24.
Worcestershire, at Worcester, Saturday, June 26.
Radnorshire, at Presteigne, Tuesday, June 29.
Herefordshire, at Hereford, Wednesday, June 30.
Brecknockshire, at Brecon, Friday, July 2.
Carmarthenshire, at Carmarthen, Monday, July 5.
Cardiganshire, at Cardigan, Wednesday, July 7.
Pembrokeshire, at Haverfordwest, Thursday, July 8.
Glamorganshire, at Swansea, Monday, July 12.
Glamorganshire, at Cardiff, Tuesday, July 13.
Monmouthshire, at Monmouth, Thursday, July 15.
Gloucestershire, at Gloucester, Saturday, July 17.
 At the City and County of the City of Bristol, Tuesday, July 20.
Somersetshire, at Bath, Thursday, July 22.
Somersetshire, at Taunton, Friday, July 23.
Cornwall, at Bodmin, Tuesday, July 27.
Devonshire, at Plymouth, Wednesday, July 28.
Devonshire, at the Castle of Exeter, Friday, July 30.
 At the City and County of the City of Exeter, the same day.
Dorsetshire, at Dorchester, Monday, Aug. 2.
Wiltshire, at Salisbury, Wednesday, Aug. 4.
 At the Town and County of the Town of Southampton, Thursday, Aug. 5.
Southampton, at Winchester, Friday, Aug. 6.

NORTHERN CIRCUIT.

John Greathed Harris, Esq. Commissioner.
Yorkshire, at Sheffield, Friday, June 18.
Yorkshire, at Wakefield, Monday, July 21.
 At the Town and County of the Town of Kingston-upon-Hull, Friday, June 25.
Yorkshire, at the Castle of York, Monday, June 28.
Yorkshire, at Richmond, Thursday, July 1.
Durham, at Durham, Friday, July 2.
Northumberland, at the Moot Hall, Newcastle-upon-Tyne, Monday, July 5.
 At the Town and County of the Town of Newcastle-upon-Tyne, the same day.
Cumberland, at Carlisle, Wednesday, July 7.
Westmoreland, at Appleby, Friday, July 9.
Westmoreland, at Kendal, Saturday, July 10.
Lancashire, at Lancaster, Monday, July 12.
Lancashire, at Liverpool, Monday, July 19.
Montgomeryshire, at Welchpool, Thursday, July 22.
Merionethshire, at Dolgelly, Saturday, July 24.
Carnarvonshire, at Carnarvon, Tuesday, July 27.
Anglesey, at Beaumaris, Wednesday, July 28.

* See *Ex parte Patterson*, in *re Williams*, 1 De Gex, 158; *Ex parte Hopkins*, in *re Forsyth*, 1 De Gex 204; and *Ex parte Teague*, 1 De Gex, p. 140.

Denbighshire, at Ruthin, Friday, July 30.

Flintshire, at Mold, Monday, Aug. 2.

Cheshire, at the Castle of Chester, Tuesday, Aug. 3.

At the City and County of the City of Chester, the same day.

MIDLAND CIRCUIT.

William John Law, Esq., Commissioner.

Essex, at Chelmsford, Thursday, June 24.

Essex, at Colchester, Friday, June 25.

Suffolk, at Ipswich, Monday, June 28.

Norfolk, at the Castle of Norwich, Wednesday, June 30.

At the City and County of the City of Norwich, the same day.

Norfolk, at Yarmouth, Thursday, July 1.

Suffolk, at Bury St. Edmunds, Saturday, July 3.

Norfolk, at Lynn, Monday, July 5.

Northamptonshire, at Peterborough, Tuesday, July 6.

Huntingdonshire, at Huntingdon, Wednesday, July 7.

Cambridgeshire, at Cambridge, Thursday, July 8.

Northamptonshire, at Northampton, Saturday, July 10.

Rutlandshire, at Oakham, Monday, July 12.

Lincolnshire, at Lincoln, Tuesday, July 13.

Nottinghamshire, at Nottingham, Thursday, July 15.

At the Town and County of the Town of Nottingham, the same day.

Derbyshire, at Derby, Saturday, July 17.

Leicestershire, at Leicester, Monday, July 19.

Staffordshire, at Stafford, Wednesday, July 21.

Shropshire, at Shrewsbury, Friday, July 23.

At the City and County of the City of Lichfield, Saturday, July 24.

Shropshire, at Oldbury, Monday, July 26.

Warwickshire, at Birmingham, the same day.

Warwickshire, at Warwick, Tuesday, July 27.

Warwickshire, at Coventry, Wednesday, July 28.

Bedfordshire, at Bedford, Friday, July 30.

Buckinghamshire, at Aylesbury, Saturday, July 31.

HOME CIRCUIT.

Charles Phillips, Esq., Commissioner.

Kent, at Dover, Thursday, July 8.

At the City and County of the City of Canterbury, Saturday, July 10.

Kent, at Maidstone, Tuesday, July 13.

Sussex, at Lewes, Friday, July 30.

Hertfordshire, at Hertford, Friday, Aug. 6.

LAW PROMOTIONS AND APPOINTMENTS.

CHRISTOPHER HOTSON, Esq., of Lincoln's Inn, Barrister-at-Law, has been appointed an Assistant Commissioner, for the period of 30 days from the 17th of February instant, for the purpose of conducting a special inquiry into the accounts of the Weymouth Union.

MASTERS EXTRAORDINARY IN CHANCERY.

From Jan. 26th to Feb. 19th, 1847, both inclusive, with dates when gazetted.

Benning, Charles Stockdale, Luton. Feb. 16.

Cowdry, Nathaniel, Bath. Feb. 19.

Eastwood, Abraham Greenwood, Eastwood, near Todmorden. Feb. 19.

Edmonds, Richard Gard, Plymouth. Feb. 16.

Guy, Henry, Carlisle. Feb. 2.

Mounsey, George, Carlisle. Feb. 2.

Patterson, Alexander Frederick, Southampton. Jan. 26.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Jan. 26th to Feb. 19th, 1847, both inclusive, with dates when gazetted.

Carter, Francis and Alfred Carter, Coventry and Oldbury, Attorneys and Solicitors. Feb. 5.

Holden, John, and John Longworth Clarke, Liverpool, Attorneys and Notaries. Jan. 29.

Mackey, William Henry, and William Bolton Girdlestone, Southampton. Attorneys and Solicitors. Feb. 16.

Prout, William, and George Bridgman, Dartmouth, Attorneys and Solicitors. Jan. 26.

Williams, David, and Daniel Breese, Portmadoc, Attorneys and Solicitors. Jan. 26.

PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

House of Commons.

NEW BILLS IN PROGRESS.

Law of Railways. For 2nd reading. Mr. Strutt.

Agricultural Tenant-right. For 2nd reading. Mr. Strutt.

Roman Catholics Relief. In Committee. Mr. Watson.

Pious and Charitable Property. For 2nd reading. Lord J. Manners.

Rating Small Tenements. For 2nd reading. Mr. Waddington.

Markets and Fairs Clauses. In Committee. Mr. Strutt.

Public Undertakings Clauses. Committee. Mr. Strutt.

Gas Works Clauses. In Committee. Mr. Strutt.

Waterworks Clauses. In Committee. Mr. Strutt.

NOTICES OF NEW BILLS.

For the Speedy Trial and Punishment of Juvenile Offenders. Sir John Pakington.

To Encourage Life Insurance. Mr. Godson.

Total Repeal of Punishment of Death. Mr. Ewart.

TAXES ON JUSTICE.

Mr. Watson's motion has been postponed till after Easter.

THE EDITOR'S LETTER BOX.

THE paper on the power to appoint new trustees is acceptable.

P. R. A.'s suggestion of a *substitute* for the Annual Certificate Duty shall be noticed next week. The objection to it, however, is, that it would be imposing a tax on the administration of justice.

The letter from Preston as to the operation of the Small Debts Act on existing actions shall in substance be inserted.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 6, 1847.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

THE SMALL DEBTS COURTS. NEW RULE OF EVIDENCE.

COMPETENCY OF HUSBAND AND WIFE AS WITNESSES FOR AND AGAINST EACH OTHER.

We alluded some months since to the important change in the law of evidence about to be introduced under the provision of the County Courts Act of last session, (9 & 10 Vict. c. 95, s. 83,) which allows a husband or wife to be examined in a cause in which one or both are parties. The clause is as follows:—

"That on the hearing or trial of any action or other proceeding under this act, the parties thereto, *their wives* and all other persons, may be examined, either on behalf of the plaintiff or defendant, upon oath, or solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the court."

The vagueness and absence of precision which prevail throughout the act are observable in this section, and will probably suggest many grave doubts as to its scope and meaning. Without wasting time in criticising the language, we desire to understand, whether it is intended by this provision merely to enact that parties and their wives shall not be considered incompetent as witnesses, and their testimony excluded by reason of their interest in the subject-matter of the suit? or is the effect of the enactment also to abrogate the well-established rule arising out of the relation of husband and wife? In either point of view the clause introduces a startling alteration in the spirit and practice of the

law. If the latter construction prevails, the enactment is fraught with the most momentous results as regards the social and moral interests of society.

No doubt, the tendency of courts of justice in modern times has been, to discountenance objections as to the competency of witnesses founded upon the circumstance that the witness was interested in the subject-matter of litigation. It has been thought more conducive to justice to admit the testimony of interested parties, leaving it to the tribunal called upon to give effect to such testimony to consider the degree of credit to which such evidence is entitled, and how far its weight is affected by the influence under which it is given. This principle is well expressed in the preamble of the Act "for improving the Law of Evidence," (6 & 7 Vict. c. 85,) which was framed and brought before the Upper House of Parliament by Lord Denman, and which recites, that "the inquiry after truth in courts of Justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue, both in criminal and in civil cases, should be laid before the persons who are appointed to decide upon them, and that such persons should exercise their judgment on the credit of the witnesses adduced, and on the truth of their testimony." The statute then proceeds to declare, that witnesses are not to be excluded from giving evidence by incapacity from crime or interest; with this proviso, however, "that this act shall not render competent any party to any suit, action, or proceeding, individually named in the record, or any person in whose immediate

and individual behalf any action may be brought or defended, either wholly or in part, or the husband or wife of such persons respectively." With a clear perception of the mischief to be guarded against, and an anxious desire to advance the remedy, the Lord Chief Justice of the Queen's Bench, who has had most extensive experience in such matters, so recently as the year 1843, thought it expedient expressly to declare that the parties to a cause, and the wives of such persons, should not be competent witnesses. The converse is to be the law in the courts established under the Small Debts Act. How far it is likely to operate in advancing truth, or increasing a regard for the solemnity of an oath, that the principals in litigation, during the excitement of a trial, should be called upon to give their own version of facts, or negative those adduced on the other side, we leave to be determined by those whose experience enables them to recal an instance in which a plaintiff and defendant have been examined under an order of reference. In a great majority of cases, the relative position of plaintiff and defendant in a suit involves the public assertion of a conflicting state of facts. *A.* claims a debt, which he alleges *B.* owes to him. *B.* in his defence alleges, either that he never owed the debt, or that he has paid it. The party in the wrong, before he comes into court, has already pledged himself to a misstatement of facts. To maintain a character for veracity, it is essential that he should support by his own oath the declarations he has made to his neighbours and friends. Is it wise to place a party in a position where the influences of interest and feeling are inevitably opposed to the obligations of an oath? Is there not some reason to apprehend that the enactment, which enables a plaintiff or defendant to be his own witness, will afford an advantage to the reckless and unprincipled, outrage justice, and render the courts about to be established throughout the country the hotbeds of perjury.

By the clause under consideration, however, it is not merely the parties to an action who are competent to give evidence, the wife of either party may be examined, at the instance, we presume, either of the husband or of the adverse party. All the objections to a party giving evidence in his own cause, and many others peculiar to the social position and character of females, arise when we find a wife called upon to give evidence for her husband. But sup-

pose the adverse party desires to avail himself of the wife's evidence against her husband, is he to be restrained from doing so by any other rules than those which would prevail in the examination of any different witness? The importance of the construction to be put upon the 83rd section of the act in this respect may be more readily appreciated by an examination of the principle upon which the rule heretofore acted upon, both in civil and criminal cases, was founded. It is thus stated by Mr. Starkie, in his treatise on evidence:—"The husband and wife cannot be witnesses for each other, for their interests are identical, nor against each other on grounds of public policy, for fear of creating distrust and dissension between them, and occasioning perjury. So important (continues the learned writer) is this rule, that the law will not allow it to be violated even by agreement: the wife cannot be examined against her husband, although he consent; and the principle is further preserved by adhering to the rule even after the marriage tie has been dissolved by the death of one of the parties, or by a divorce for adultery."

The general doctrine, that the trust and confidence which ought to subsist between man and wife must not be betrayed, and that intolerable political inconvenience would arise if discord and dissension were caused between persons standing in so close and tender a relation, by obliging the one to give evidence against the other, has been recognised and acted upon for centuries by all the great luminaries of the law. That a principle so long established, of such frequent application and productive of such important results, should be set aside without any discussion as to its merits, or any calculation as to the consequences that may arise from its abandonment, we are unwilling to believe. So far as can be inferred from a diligent perusal of the parliamentary debates, the clause above cited, was introduced without explanation, and passed both houses of parliament without argument, discussion, or reference. No light, therefore, is thrown upon the intentions of the legislature from contemporaneous declarations, and we return to the language of the clause in question, as affording the only materials by which it can be construed. With the latitude neces-

* Vol. 2, p. 549, 3rd ed. Citing, *Co. Lit.* 6, 112, 187; 2 *Hawk. c.* 46; 2 *Hale*, 279; *Mardwicks*, 264, and 6 *East*, 192.

sarily allowed on cross-examination, great practical difficulty may be anticipated in preserving the rule in its integrity; but we venture respectfully to suggest to those on whom the duty devolves of administering the new law, that the terms of the section under consideration are not such as to require a departure from the rule, that a wife shall be protected from disclosing facts which have come to her knowledge in confidential intercourse with her husband; and that a different construction of the clause may be attended with incalculable mischief.

We have been induced to avail ourselves of an early opportunity of directing attention to this point, from seeing it stated some days since in all the daily papers that Mr. Bingham, one of the police magistrates at Marlborough Street, had stated it to be his intention to allow the wives of persons charged before him with criminal offences to be examined, in supposed conformity with the intentions of the legislature as disclosed in the section referred to. Such a resolution appears to have been at the least premature. The law only authorises the adoption of such a proceeding in courts constituted under the Small Debts Act; and it is to be hoped it will not be carried into effect in any court, without due consideration and a determination to limit the course of cross-examination in the manner suggested.

THE NEW BANKRUPTCY AND INSOLVENCY BILL.

It will be recollected that the abolition of the "Septuagint" Bankruptcy Commissioners, as Lord Brougham termed them,—the creation of New Bankruptcy Courts, with a Court of Review,—and the delegation of much of the insolvency business to the Commissioners in Bankruptcy, were the works of his lordship.

The following bill is a marvellous illustration of the instability of modern legislation, introduced, as it has been, by the same learned lord:—

It proposes to repeal the jurisdiction of her Majesty's Court of Bankruptcy and District Courts of Bankruptcy in matters of insolvency, to abolish the Court of Review, and to reduce the number of commissioners. It recites, that it hath been found that the jurisdiction in matters of insolvency given to her Majesty's Court of Bankruptcy and District Courts of Bankruptcy by the 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, is attended with inconvenience to the suitors in those courts, and is prejudicial to such courts as courts for the administration of bankrupts' estates, and the distribution of assets.

The 1st section, therefore, repeals those acts, so far as the last act relates to insolvency and insolvent debtors, and all power, jurisdiction, and authority given by such acts, or by the rules and orders made in pursuance thereof, to the Court of Bankruptcy, and to the commissioners and district commissioners thereof in matters of insolvency.

2. Petitions under recited acts which are now in dependence, &c., to remain in force, &c.

3. That the Court for the Relief of Insolvent Debtors in England, and the commissioners thereof, and the judges appointed or to be appointed under 9 & 10 Vict. c. 95, for the more easy recovery of small debts and demands, shall have jurisdiction in all matters of insolvency; the said Court for the Relief of Insolvent Debtors, and the commissioners thereof, in all cases in which the insolvent shall have resided for twelve calendar months within the counties of Middlesex, Hertford, Kent, Surrey, Sussex, Hants, Oxford, Buckingham, Berks, Bedford, Northampton, Huntingdon, Cambridge, Norfolk, Suffolk, or Essex, to which counties the jurisdiction of the said court and the commissioners thereof is henceforth hereby restricted, except as to petitions now in dependence or which shall have been presented prior to the passing of this act; and the judges of the County Courts aforesaid in all cases wherein the insolvent shall have resided elsewhere, and shall have been for twelve calendar months resident within the district of the judge to whom he shall prefer his petition; and that every judge of the County Courts aforesaid shall, from and after the passing of this act, have and exercise the same power, jurisdiction, and authority in all respects under the acts now or hereafter in force relating to insolvent debtors, or the said Court for the Relief of Insolvent Debtors, and the commissioners thereof; and that every such judge, and every commissioner of the Insolvent Debtors' Court, shall, singly, be and form a court for every purpose under this or the aforesaid acts.

4. That the said Court for the Relief of Insolvent Debtors, and the commissioners thereof, and the judges of the County Courts aforesaid, shall, within their respective jurisdiction aforesaid, have power, forthwith after the filing of the petition of any insolvent debtor, to make an interim order protecting such insolvent debtor from arrest; and if such insolvent be a prisoner in execution upon any judgment obtained in any action for the recovery of any debt mentioned in his schedule, such court or commissioners or judge aforesaid may, if they shall think fit, order his discharge: Provided always, that on the granting of every such interim order or discharge, such court, commissioner, or judge by whom the same shall be made shall take from every such insolvent an undertaking in writing to attend every sitting of the court held in the matter of his petition, or at any time when required by such court, commissioner, or judge so to do; and that every wilful breach or neglect of any such undertaking shall be a misdemeanor, and shall be

punishable by imprisonment, with or without hard labour, in the discretion of the judge trying the same; and that the mode and form of procedure before such court and commissioners and judges aforesaid shall in all other respects be the same as that now in use in the said Court for the Relief of Insolvent Debtors, and that in the courts of the said judges the clerk of court shall in every case of insolvency be and act as the provisional assignee of the estate and effects of the insolvent, and be subject to the same rules, regulations, and penalties, and hold his office of provisional assignee on the same terms, and in the same way and manner in every respect, as the provisional assignee of the said Court for the Relief of Insolvent Debtors now holds his office.

5. The Court of Review and offices of the chief and puisne judges abolished. And every commissioner of her Majesty's Court of Bankruptcy and District Courts of Bankruptcy shall be and form a Court of Record, and have original jurisdiction in all matters heretofore within the province of such Court of Review or judges respectively.

6. That an appeal may be made to the Lord Chancellor against the decision of any such commissioner, in the same manner as appeals are now made from decisions of the Court of Review; but that no appeal shall be competent against the decision or order of any commissioner as to the allowance or suspension of any bankrupt's certificate, his decision as to which shall be final and complete, and that such certificate, when allowed and signed by the commissioner, shall from and after the passing of this act require no confirmation.

7. On the next three vacancies of commissioners happening in London, their offices to be abolished.

8. Appeals from decisions of Courts of Bankruptcy to be heard by Lord Chancellor or one of the Vice-Chancellors.

9. If commissioners in London be reduced to three, senior commissioners in the country to succeed to vacancy.

10. That all matters and questions heretofore referable to and decided by a subdivision court shall be heard and decided by the commissioner acting in the prosecution of the fiat under which the same shall have arisen, or by any other commissioner of the Court of Bankruptcy who may be acting by him, and that any one commissioner shall henceforth have and exercise the same power, jurisdiction, and authority as has heretofore been vested in such subdivision courts.

11. Every fiat issued to be allotted to the Court or District Court of Bankruptcy by the Secretary of Bankrupts, &c.

12. Office of Chief Registrar of Court of Bankruptcy to be abolished, and duties transferred to the Master of the court.

13. After passing of this act no fees to be taken, except those enumerated in Schedule (A).

14. All papers, &c., in the office of the Chief Registrar shall be transferred to the office of the Master, and all documents heretofore filed,

&c., shall be hereafter filed, &c., in the said office.

15. On death, &c., of Clerk of Enrolments, duties of office to be transferred to the Master, and the Lord Chancellor may make rules, &c., appertaining to the said office.

16. Chief clerk of Master may, in certain cases, act as deputy to the Master, under an order of the Lord Chancellor.

17. Providing for reduction of registrars in London.

18. Providing for reduction of registrars in the country.

19. On registrars in London being reduced in number to three, the senior registrar in the country entitled to vacancy.

20. That it shall be lawful for any registrar of the Court of Bankruptcy or District Courts of Bankruptcy, during vacation, or during the illness or necessary and unavoidable absence of any commissioner thereof, and under an order from the Lord Chancellor for that purpose had and obtained, to act for and as the deputy of such commissioner in the prosecution of any fiat in bankruptcy, and that such registrar so acting shall have and exercise all power vested in such commissioner, except the power of commitment: Provided always, that all depositions taken before such registrar, and all acts done by him, shall be reduced to writing, and shall be annexed to and form part of the proceedings under such fiat.

21. That no person shall be appointed a registrar of the Court of Bankruptcy or District Courts of Bankruptcy who shall not be a barrister of five years standing at the bar, or of three years standing at the bar having previously practised as a special pleader for three years, or an admitted attorney of one of her Majesty's superior courts at Westminster, or of her Majesty's Court of Bankruptcy, in actual practice of not less than five years standing on the roll of such court or courts.

22. Lord Chancellor may order certain annuities on retirement to be paid.

23. Time within which clerk or usher whose office may be abolished is to make his claim for compensation to the Commissioners of the Treasury, who are to examine into the same.

24. Official assignees, &c., to be transferred to other courts as Lord Chancellor may direct.

25. Lord Chancellor, &c., to make rules for carrying this act into execution.

BRIEF NOTES OF DECISIONS IN AND AFTER HILARY TERM.

PRINCIPLE UPON WHICH INJUNCTIONS ARE GRANTED TO PREVENT THE INFRINGEMENT OF PATENT RIGHTS.

In a late case, upon a motion for an injunction to restrain the defendant from using or disposing of an instrument constructed by him for the purposes of an electric telegraph, on the ground that all or most of the useful parts of it were pirated from the plaintiffs' telegraphic machinery, the Lord Chancellor, upon appeal

from the Vice-Chancellor, who had refused the injunction, entered fully into an examination of the principle upon which he was disposed to grant or refuse injunctions, when the alleged infringement was denied by affidavit. In this case the plaintiffs had obtained a patent for their invention in 1837, and another for improvements in 1840, and again for further improvements in 1842, when they also obtained an act incorporating them into a company. The defendant had also recently obtained a patent for his invention, which was in use on several lines of railway. After hearing the case very fully argued, his lordship said his difficulty was, how to apply the rule of the court to facts not clearly established. He had occasion often lately in this court to consider and state how the rule of the court was to be applied in respect to injunctions in cases in which the legal right was established; but where that right was doubtful it was very difficult and dangerous for the court to interfere, as there was no comparison between the mischief that would be done by refusing to interfere, and what might follow by interfering in a case where it might afterwards turn out that the party in whose favour the court exercised its jurisdiction had no right to its protection. He, therefore, said, on these occasions, that in such cases it became the duty of the court to be extremely cautious in granting injunctions. It was said at the bar, that he carried that doctrine further than any of his predecessors in this court, but he knew he did not. He did not, for instance, carry it so far as Lord Eldon, who, in the case of *Hill v. Thompson*,^a said he would not interfere at all in protecting a patent right, unless in case of long previous use, without having that right previously established at law. He (the Lord Chancellor) would not say he would refuse interference, or would be disposed to carry the rule of non-interference so far as that, if a case requiring it had been before him. The long undisturbed enjoyment of a thing would give the owner a right against all the world, but without such enjoyment, even in patent rights, it would not be safe to interfere by injunction, as it might afterwards be found that the party had no legal right. He was willing to assume that these plaintiffs had a right to all the inventions and matters comprised in their patents, still it would be rash in him to come to the conclusion that all these matters were the same for which the defendant had obtained his patent, in the face of the affidavits of most eminent scientific persons, who swore that the matters in the defendant's instrument, claimed by the plaintiffs as their inventions, were essentially different from them. The question was, whether this court was to interfere and stop the defendant in what he was doing, before the plaintiffs had established their title to what they so claimed. He was of opinion that such interference would be rash, after what those so much more versed in these matters, had stated in their affidavits. He would not say that these

gentlemen were right in their conclusions, but whether he himself would be doing right to interfere before the plaintiffs established their title, was what he had great doubt of. Upon these considerations he came to the conclusion that the Vice-Chancellor was right in his decision, and that the plaintiffs must establish their right at law before the court would interfere for their protection. *The Electric Telegraph Company v. Nott*. Lord Chancellor's Court. 24th Feb.

ENFORCING OBEDIENCE TO CROWN OFFICE SUBPENA.

When the decisions of the Court of Queen's Bench in settlement cases rendered it manifest that no order of removal could be sustained which was not founded on strict legal evidence disclosed in the examinations, it was apprehended that great difficulty would arise in enforcing the attendance of hostile witnesses before justices of the peace. It was pretty plainly intimated, however, by the Court of Queen's Bench, that one means of procuring evidence before the inferior tribunal was by issuing a Crown Office subpoena in the ordinary form *ad testificandum*, when oral evidence only was required, or a *subpœna duces tecum* where the witness was to produce documents. (See *Corners*, C. O. Prac. 256.) In two cases of recent occurrence it was contended that parish officers or their solicitors were not bound under a *sub. duc. tec.* to produce rate books or other documents, called for to fix the parish to which such documents belonged. To this it was answered by the court, that parties in possession of the documents were bound, at all events, to attend with them in obedience to the writ; whether they should be required to submit the documents to inspection and examination was a different question, on which the court gave no opinion. See *Reg. v. Greenaway*,^b and *Reg. v. Carey*.^c

This point has not yet been settled. In a very late case, where an attachment was moved against a party who had attended under a Crown Office subpoena before two justices, upon an application for an order of removal, but refused to give evidence because he was a rated inhabitant of the parish to which it was sought to remove the pauper, the Court of Queen's Bench discharged the rule for an attachment, on the ground that the affidavit on which it was moved did not show affirmatively that the justices had jurisdiction, or that any complaint was made to them. *Reg. v. Vickery*, 29 Jan. Q. B.

REPEAL OF ATTORNEYS' CERTIFICATE DUTY.

THE readers of this work need no reminding of the exertions which have been made from year to year by those who conduct it to expedite the repeal of this impost. We say

^a 3 Mer. 622.

^b 7 Q. B. 126.

^c Ibid.

"expedite," for at some time or other, if there be any sense of ordinary justice or common consistency, it must be repealed. Lately we expressed an opinion, that in the present state of public affairs, any attempt to accelerate the repeal would not only be unsuccessful now, but would probably tend to retard it hereafter.

A correspondent who has ably supported the claim of the profession for many years, writes thus :—

"There is no occasion to defer the repeal of that most *unjust and unequal* tax, the certificate duty, in its present form for a day. Government can get more money by a tax that will not be felt by three-fourths of the profession who suffer from it, by imposing a duty on every writ, declaration, judgment, bill in Chancery, answer, decree, conveyance, railway bill, &c., The small fee of 6d., 1s., 1s. 6d., or 2s. 6d., according to circumstances, will pay government well, and can easily be collected by the officers, and it may extend to stamping deeds. If it did give trouble, that is no reason why the profession should be robbed next November, but it will not. Government is bound to do this now; and next session let the justice of the tax at all be investigated. They have no right to throw out hints that the lawyers will find means to make their clients pay it, as I have heard some say. After having for many years oppressed the profession, government has no right to insult it.

P. R. A.

Considering a duty on all the principal proceedings in an action or suit by *whomsoever paid* as a tax on the administration of justice, we expressed our doubts of the propriety of such a substitute. Our correspondent makes the following reply :—

"How will the substitute I propose for the certificate duty be a tax on the administration of justice? I propose that the attorney, not the client, should pay it. The attorneys at present pay 12l. a year in a most oppressive and ruinous form. Is that a tax on the administration of justice? If so, my substitute is no worse; and if not, the notion of its being a tax on the administration of justice is wrong. It will afford relief to those who are entitled, and it will not hurt the country which through their rulers and representatives have treated the attorneys unjustly, and is bound to give immediate relief.

P. R. A.

NEW ORDER IN CHANCERY.

TRANSFER OF CAUSES.

Saturday, 27th February, 1847.

WHEREAS, from the present state of the business before the Lord Chancellor and the Master of the Rolls respectively, it is expedient that a portion of the causes set down to be heard before the Master of the Rolls should be

transferred to the Lord Chancellor's Book of Causes for hearing: Now we do hereby order, that the several causes set forth in the schedule hereunto subjoined be accordingly transferred from the Book of Causes of the Master of the Rolls to that of the Lord Chancellor. And we do further order, that the causes so to be transferred, (although the bills therein may have been marked for the Master of the Rolls under the orders of court of the 5th day of May, 1837, and notwithstanding any decree or orders therein made by the Master of the Rolls,) shall hereafter be considered and taken as causes originally marked for the Lord Chancellor, and be subject to the same regulations as all causes marked for the Lord Chancellor are subject to by the same orders. Provided, nevertheless, that no decree or order made by the Master of the Rolls in any of such causes shall be varied or reversed than by the Lord Chancellor himself. And this order is to be drawn up and entered with the registrar.

{ Kerr v. Gillespie,	{	fur. dirs. and costs.
{ Davis v. Roberts,		
{ Roberts v. Davis.		
{ Howard v. Prince,		
{ Pringle v. Stapleton.	{	exons. and fur. dirs. and costs.
{ Wood v. Swann.		
{ Wiggins v. Pappin,	{	fur. dirs. costs.
{ Same v. Clarke,		
{ Same v. Pappin,		
{ Same v. Marriot,		
{ Carlile v. Morrice,	{	fur. dirs. costs and petition.
{ Same v. Same,		
{ Attorney-Gen. v. East Retford,		
{ Same v. Mould,		
{ Same v. Parker,	{	COTTENHAM, C. LANGDALE, M. R.
{ (Signed)		

The causes named in the underwritten List will, on the 6th day of March next, be transferred from the Paper of the Master of the Rolls to the Paper of the Lord Chancellor, unless the solicitors for all the parties in any of such causes shall, before the said 6th day of March, sign and deliver at the Office of the Secretary of the Master of the Rolls a request in writing, that the causes named in such request respectively, may remain in the paper of the Master of the Rolls, in which case the causes not named in any such request will alone be transferred at the time aforesaid.

{ Syms v. Lee,	{
{ Coragio v. Lee,	
{ Same v. Vink.	
{ Trotter v. Walmsley.	{
{ Attorney-Gen. v. Wright.	
{ Same v. Same.	
{ Attorney-Gen. v. Corporation of Leicester,	{
{ Kirton v. Lyme.	
{ Brown v. Selby.	
{ Attorney-Gen. v. Gibbs.	{
{ Baker v. Bayldon,	
{ Same v. Addey.	
{ Coombes v. Stewart.	{
{ Attorney-General v. Day,	
{ Same v. Johnson.	
{ Lord Mostyn v. Spencer,	{
{ Mostyn v. Same.	
{ Attorney-General v. Cantia.	
{ Peters v. Peters.	

M'Farlane v. M'Farlane,
Same v. Wishart.
Leas v. Hardwick,
Same v. Goodyear.
Blagrave v. Blagrave,
Same v. Same.
Thorpe v. Harvey.
Dowding v. Bartley,
Same v. Same,
Same v. Same,
Fussell v. Bartley,
Same v. Dowding,
Same v. Bartley,
Same v. Dowding.
Wilkinson v. Charlesworth.
Smith v. Earl Effingham,
Same v. Same.

RULES OF PRACTICE FOR THE COUNTY COURTS IN ENGLAND.

1. Every plaint must be entered upon application at the office of the clerk, pursuant to the form in the plaint book in the schedule to these rules annexed.

2. On entering the plaint, the plaintiff shall if the sum sought to be recovered shall exceed 5*l.* deliver at the office of the clerk as many copies of a statement of the particulars of his demand, or cause of action, as there are defendants, with an additional copy to file: provided always, that in all cases, the judge, in his discretion, and on such terms as he may think fit, may adjourn the cause at the hearing, for the delivery of a statement of particulars or further particulars.

3. At the time of entering the plaint, the clerk of the court shall give to the plaintiff a note according to the form in the said schedule; and no money shall be paid out of court to the plaintiff unless on production of such note, or by order of the judge.

4. The summons to appear to a plaint shall be issued according to the forms in the schedule, and shall be dated as of the day on which the plaint was entered.

5. The clerk shall annex to each summons to be served one of the copies of the statement of the particulars of the plaintiff's demand furnished to him pursuant to rule 2, sealed with the seal of the court.

6. Every such summons must be served ten clear days before the holding of the court at which it shall be returnable.

7. The service of any summons to appear to a plaint, must be either personal, or by delivering the same to some person at the place of abode, or the place of business of the defendant.

8. Where a defendant shall be living or serving on board of any ship or vessel, or be residing or quartered in any barracks, and serving her Majesty as a soldier or marine, it shall be sufficient service to deliver the summons to the senior officer on board, or to the person who may at the time have charge of such ship or vessel, or to the adjutant of the corps, or any officer or sergeant of the company to which such soldier or marine shall belong, or be attached.

9. Where a defendant shall be working in any mine or other works carried on under ground, and the bailiff shall not be able to serve him with a summons, as hereinbefore directed, it shall be sufficient service to deliver the summons to the engine-man, banks-man, or other person in charge of such mine or works.

10. Where any defendant shall, by keeping his house or place of abode closed, or by violence or threats, prevent any bailiff from serving the summons as hereinbefore directed, and such summons shall have been affixed on the door of such house or place of abode, or otherwise served as nearly as may be according to the mode hereinbefore directed, such service shall be deemed good service.

11. Provided, that in all cases where a summons to appear to a plaint shall not have been served personally, and the defendant shall not appear at the return day, it must be proved to the satisfaction of the judge that the service of such summons has come to the knowledge of the defendant ten clear days before the said return day.

12. Where any such summons has not been served as hereinbefore directed, the judge may, in his discretion, in order to save the Statute of Limitations, direct another summons or successive summonses to be issued, bearing the same date and number as the first summons.

13. The bailiff who serves a summons to appear to a plaint shall indorse on a copy of such summons the time and manner of the service thereof, and shall produce such copy, so indorsed, at the court at which such summons shall be returnable, and such copy shall be filed by the clerk of the court.

14. The above rules, except rule 11, as to the mode of service of summonses to appear to a plaint, shall apply to the service of all summonses, judgments, orders, notices, and processes whatsoever, issuing under the authority of the said act, except where otherwise directed by the said act or any rule under the authority thereof.

15. Where the defendant pays money into court, the same must be paid into court five clear days before the return of the summons.

16. If the plaintiff elect to accept in full satisfaction of the debt or damages claimed, such part thereof as shall have been paid into court by the defendant, and shall give a written notice to that effect to the clerk of the court, and a like notice to the defendant, by serving the same on such defendant personally or leaving it at his place of abode or business three clear days before the return of the summons, the action shall be discontinued, and the plaintiff shall not be liable to any further costs. But in default of giving such notice the suit will proceed; and if the plaintiff do not appear at the hearing, he shall be liable to pay to the defendant such costs as he may incur in appearing to try the cause, or such other sum of money as the judge may order.

17. Where a defendant desires to set off any debt or demand alleged to be due to him by the plaintiff, he must give notice thereof in writing to the clerk of the court, and deliver

to such clerk two copies of a statement of the particulars of such set-off five clear days before the return of the summons.

18. The clerk of the court shall give to the plaintiff a notice of such set-off, according to the form in the schedule, in manner directed by the act, together with one of the copies of such particulars of set-off, sealed with the seal of the court: Provided always, that where such notice shall not have been given, the judge in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the judge shall think proper.

19. Where a defendant intends to rely on the special defence of infancy, coverture, the Statute of Limitations, or his discharge under any statute relating to bankrupts, or any act for the relief of insolvent debtors, he shall give notice in writing to the clerk of the court, five clear days before the day on which the summons is returnable: Provided always, that where such notice shall not have been given, the judge, in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the judge may think proper.

20. Every notice of a demand of a jury, where the debt or demand claimed shall exceed £5, must be made in writing to the clerk of the court, two clear days before the return of the summons.

21. No application for a new trial, or to set aside any proceedings, shall be made subsequently to the court at which such trial or other proceeding shall have been had, unless the party making such application shall have given a written notice thereof to the clerk of the court at his office, and to the other party, by serving the same personally on such party, or leaving the same at his usual place of abode or business, seven clear days before the time of holding the court at which such application shall be made.

22. Where any money is paid into court under any execution or order of the court, if the clerk receive notice from any party of his intention to apply to the court to set aside the execution or order under which such money is paid into court, the clerk shall retain the same until after such application has been determined, or until the judge shall otherwise order.

23. When any order is made for the payment of any debt, damages, costs, or other sum of money by instalments, such instalments shall be payable at the office of the clerk of the court, at such periods as the court shall order; and if no order be made, then the first shall become due at the expiration of one calendar month from the day of making the order, and every successive instalment at like periods of a calendar month from the day of the previous instalment becoming due.

24. Where any cattle, goods, or chattels

taken as a distress for rent in arrear, or damage *faisant*, shall have been replevied by the sheriff, the party at whose instance such replevin shall have been made shall enter his plaint in the court held under the authority of this act, for the district within which such distress may have been made.

25. On entering a plaint or replevin, the plaintiff must specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken under the distress, and of the taking of which he complains.

26. All actions of replevin in cases of distress for rent in arrear, or damage *faisant*, shall be tried in a summary way as all other actions in the courts held under the authority of this act, and the judgment therein in ordinary cases, whether for plaintiff or defendant, shall be according to the forms in the schedule, or to the like effect.

27. Execution on a judgment is not to issue by or against any person not a party to such suit, without a plaint and summons upon the judgment, the proceedings in which shall be the same as in ordinary cases.

28. Where a judgment has been given for or against a person deceased, his executors or administrators may in the same manner sue or be sued upon the judgment.

29. The ordinary judgment against executors or administrators shall be, to pay the debt or damages and costs to be levied out of the goods of the deceased in their hands, and as to the costs, if there are no such goods, then to be levied out of their own goods.

30. Where the defence is that executors or administrators have fully administered, if it be adjudged by the court that they have assets not administered, then a like judgment shall go as in the above case, but only as to the goods of the deceased, to the amount proved to be in their hands, and of assets *quando acciderint*, as to the residue; the judgment as to costs shall be, that they be levied *de bonis testatoris si, &c., et si non, de bonis propriis*.

31. If the sole defence by executors or administrators be, that they have fully administered, and the judgment of the court is for the defendants, it shall be, that the amount found to be due be paid and levied out of the assets of the deceased *quando acciderint*, and the costs shall be in the discretion of the judge.

32. Where judgment has been given against executors and administrators, that the amount be levied upon the assets of the deceased *quando acciderint*, the plaintiff may at any time proceed by plaint against them, suggesting that assets have come to their hands, and the court shall proceed and give judgment thereon, if for the plaintiff, as in rule 29, and if for the defendants, they shall be entitled to their costs.

33. Where judgment has been given that the debt (or damages) and costs be levied *de bonis testatoris*, and the plaintiff complains that the defendants have been guilty of a *devastavit*, inasmuch as no goods of the deceased are forthcoming to satisfy the execution

issued, then a summons may be taken out in the form given in the schedule, or to the like effect, and thereupon, as in ordinary cases, the court shall proceed to the hearing and judgment, and if judgment be given against such executors or administrators, then it shall be that they pay the debt, or damages and costs, to be levied *de bonis testatoris, si, &c. et si non, de bonis propriis*.

34. Where in an action against executors or administrators, the defence is, that they are not executors or administrators, or it is founded on some matter or thing arising since the death of the testator or intestate, *ex. gr.* a release to the defendants, if the judgment of the court be against them, it shall be, that the debt or damages and costs, to be levied and paid *de bonis testatoris si, &c., et si non, de bonis propriis*.

35. The judge shall in each case order what number of witnesses shall be allowed, on taxation of costs, the allowance for whose attendance shall be according to the scale in the schedule, unless otherwise ordered, but in no case to exceed such scale.

36. All costs shall be taxed by the clerk of the court.

37. No warrant of execution or commitment shall be executed after the expiration of two calendar months from the date thereof.

38. Every summons for a party to appear to be examined upon oath, pursuant to the 98th section of the said act, shall be served not less than three clear days before the day on which the party is required to appear to such summons: Provided always, that service of such summons at any time before the time appointed for the appearance of such party may be deemed by the judge to be good service, if it shall be proved to his satisfaction that such party was about to remove out of the jurisdiction of the court.

39. Where any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any court holden under the authority of the said act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, and summonses have been issued on the application of the officer charged with the execution of such process, such summonses shall be served in such time and manner as hereinbefore directed for a summons to appear to a plaintiff, and the claimant shall be deemed the plaintiff, and the execution creditor the defendant; and the claimant shall, five clear days before the day on which the summonses are returnable, deliver to the said officer, or leave at the office of the clerk of the court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or in case of a claim for rent, of the amount thereof, and for what period the same is claimed to be due.

40. The clerk of every court shall keep the several books, and in the form in the schedule.

41. Every entry in such books shall have a

number prefixed, corresponding with the number of the plaint to which it refers.

42. The clerk of every court shall have an office at each place where the court of which he is clerk is held.

43. All matters or things required to be done by the clerk of the court may be done by the clerk of the court, or by the assistant clerk or clerks provided by him.

44. The office of the clerk shall be open daily, and the office hours shall be from ten o'clock in the morning until four in the afternoon.

45. At every court, or at such other times as the judge shall require, the high bailiff shall deliver a statement or return, pursuant to the form in the schedule, of what shall have been done since his last return under every process of execution or commitment, which he shall have been required to execute.

46. Eight days before the day of the holding of the court, the high bailiff shall deliver to the clerk of the court a list of all summonses to appear which shall have been served, and the clerk shall forthwith stick up such list in his office.

47. Every high bailiff required to execute any warrant of execution or commitment issuing out of any other court, shall make a return to such last-mentioned court forthwith on the execution thereof; and if he shall not have executed such warrant, he shall return the same at the expiration of two calendar months from the date thereof.

48. Every bailiff levying or receiving any money by virtue of any process issuing out of the court of which he is bailiff, shall, within three days after the receipt thereof, pay over the same to the clerk of such court.

49. If any high bailiff shall have levied or received any money under any process issuing out of any other court, he shall, within three days from the receipt thereof, pay over such money, retaining the fees for execution thereof, to the high bailiff of such last-mentioned court.

50. No summons, notice, order, or other process shall be served on Sunday, Christmas-day, or Good Friday; but such days shall be counted in the computation of the time required by these rules, unless any of such days shall be the last day of such time, in which case it shall be excluded from such computation.

51. In case of proceedings not provided for by the forms in the schedule, the clerk of the court shall issue the necessary process, using, where practicable, the forms prescribed in the schedule as guides in framing the same.

52. Wherever the singular number is used in these rules in reference to persons or things, it shall be understood, when necessary to give full effect to the rule, to mean several persons or things; and every word importing the masculine gender shall in like manner, when necessary, be understood to include the feminine gender.

FRED. POLLOCK,
WM. WIGHTMAN,
C. CRESSWELL,
W. ERLE,
E. V. WILLIAMS.

LIST OF SHERIFFS, UNDER-SHERIFFS,

WARRANTS are granted in Town for Breconshire, the Borough of Carmarthen, shire, Durham, Exeter, Gloucestershire, Gloucester City, Kingston-upon-Hull, Lancashire, Counties, not before named.

Office Hours, in Term, from 11 till 4 ;

ENGLAND.

<i>Counties, &c.</i>	<i>Sheriffs.</i>				
Bedfordshire . . .	Robert Newland, of Kempston, Esq.	..	..	..	..
Berkshire . . .	William Henry Stone, of Streatley House, Esq.	..	..	..	..
Berwick-upon-Tweed .	Alexander Cahill, Berwick-upon-Tweed, Esq.	..	..	..	..
Bristol, City of . .	Abraham Gray Harford Battersby, of Stoke House, Westbury-upon-Trym, Gloucestershire, Esq. . .	..	..	..	..
Buckinghamshire . .	The Baron Meyer Amschel de Rothschild, of Mentmore	..	..	..	..
Cambridge and Hunts	Robert Francis Pate, of Wisbeach, Esq.	..	..	..	..
Canterbury, City of .	William James Cooper, of High-street, Canterbury, Esq.	..	..	..	..
Cheshire . . .	Ralph Gerard Leicester, of Toft-hall, Esq.	..	..	..	..
Chester, City of . .	John Rogers, of Chester, Esq.	..	..	..	..
Cinque Ports . . .	His Grace the Duke of Wellington	..	..	..	..
Cornwall . . .	Nicholas Kendal, of Pelyn, Esq.	..	..	..	..
Coventry, City of . .	Act 5 & 6 Vict. c. 110, s. 10, abolished the Office of Sheriff for this City, and				
Cumberland . . .	Gilfred William Hartley, of Rosehill, Esq.	..	..	..	..
Derbyshire . . .	John Bell Crompton, of Milford, Esq.	..	..	..	..
Devonshire . . .	Henry Champernowne, of Darlington, Esq.	..	..	..	..
Dorsetshire . . .	Thomas Bowyer Bower, of Iwerne Minster, Esq.	..	..	..	..
Durham . . .	John Fawcett, of North Bailey, Durham, Esq.	..	..	..	..
Essex . . .	William Coxhead Marsh, of Park-hall, Esq.	..	..	..	..
Exeter, City of . .	Henry Willocks Hooper, of 12, Bedford-circus, Exeter, Esq.	..	..	..	..
Gloucestershire . . .	Thomas Barwick Lloyd Baker, of Hardwick-court, Esq.	..	..	..	..
Gloucester, City of .	Francis Hawkins, of Gloucester, Esq.	..	..	..	..
Hampshire . . .	Lancelor Archer Burton, of Warblington, Havant, Esq.	..	..	..	..
Herefordshire . . .	Sir Valters Cornewall, of Moccas, Bart.	..	..	..	..
Hertfordshire . . .	Humphrey Harper Burchell, of Bushey Grange, near Watford, Esq.	..	..	..	..
Huntingdon & Cambridge	Robert Francis Pate, of Wisbeach, Esq.	..	..	..	..
Kent . . .	John Pelly Atkins, of Halstead, Esq.	..	..	..	..
Kingston-upon-Hull	John Lee Smith, of Sutton in Holderness, near Hull, Esq.	..	..	..	..
Lancashire . . .	William Gale, of Lightburn-house, Ulverston, Esq.	..	..	..	..
Leicestershire . . .	William Wootton Abney, of Sweptstone, Esq.	..	..	..	..
Lincolnshire . . .	Theophilus Fairfax Johnson, of Spalding, Esq.	..	..	..	..
Lincoln, City of . .	William Henry Johnson, of Lincoln, Esq.	..	..	..	..
Lichfield, City of . .	Joseph Pitt, of Lichfield, Esq.	..	..	..	..
London, City of . .	{ Robert William Kennard, Esq. . .	..	..	..	..
Middlesex . . .	{ Thomas Challis, Esq. . .	..	..	..	..
Monmouthshire . . .	William Mark Wood, of Rumney, Esq.	..	..	..	..
Newcastle-upon-Tyne	Joseph Crawhall, of Newcastle-upon-Tyne, Esq.	..	..	..	..
Norfolk . . .	Sir Jacob Henry Preston, of Beeston St. Lawrence, Bart.	..	..	..	..
Norwich, City of . .	Charles Winter, of Norwich, Esq.	..	..	..	..
Northamptonshire . .	Thomas Tryon, of Bulwick-park, Esq.	..	..	..	..

DEPUTIES, AND AGENTS, FOR 1847.]

Radnorshire, and all places except Bristol, Canterbury, Cinque Ports, Chester, Derby-Lincoln City, Monmouthshire, Norwich, Poole, Southampton, York City, and the Welsh

and in Vacation, from 11 till 3.

ENGLAND.

Under-Sheriffs.

Deputies and Town Agents.

Henry Lucas, of Newport Pagnel, Bucks, Esq. ..	Messrs. Gem, Pooley and Beisley, 1, Lincoln's-inn-fields.
Edward Vines, of Reading, Esq. (A. U. Messrs. Vines and Hobbs, of Reading)	Messrs. Abbott, Jenkins and Abbott, 8, New Inn.
George Marshall, of Berwick-upon-Tweed, Esq. ..	George Knox, 4, Bloomsbury Square.
William Ody Hare, 3, Small-street, Bristol, Esq. ..	Messrs. Bridges, Mason and Bridges, Princes Street, Red Lion-square.
James James, Esq., (firm James and Smythies,) of Aylesbury	William Meyrick, 2, Furnival's-inn.
Edward Jackson, of Wisbeach, Esq.	Messrs. Wing and Twining, 1, Gray's Inn-square.
John Nutt, of Canterbury, Esq.	Robert Southee, 16, Ely-place.]
Messrs. James and Thomas Roscoe, Knutsford, (A. U. John Hostage, Chester, Esq.) ..	Messrs. Cole and Son, 4, Adelphi-terrace, Strand.
John Finchett Maddock, Town Clerk of Chester, Esq. ..	John Philpot, jun., 3, Southampton-street, Bloomsbury.
Thomas Pain, of Dover, Esq. ..	Messrs. Wright and Kingsford, 23, Essex-street, Strand.
Thomas Coode, Esq., (firm of Coode, Sons and Shilson,) of St. Austell	Messrs. Coode, Brown and Kingdon, 13, Bedford Row.
Warrants are now granted	By the Sheriff of WARWICKSHIRE.
Wilson Perry, of Whitehaven, Esq.	William Edward Stubbs, 15, Furnival's Inn.
John Barber, of Derby, Esq.	Messrs. H. and C. Hall, 16, New Boswell-court
Frederick Kitson, (firm Sanders and Kitson,) of Exeter, Esq.	Messrs. Beevor and Buckley, 2, Gray's Inn-square.
William Mansfield, of Dorchester, Esq.	John Bishop, 14, Lincoln's Inn Fields.
William Emerson Wooler, of Durham, Esq. ..	Henry Morgan Vane, Carlton-chambers, 12, Regent-street.
Richard Bullock Andrews, of Epping, Esq. ..	Messrs. Nelson and Wynn, Gresham-place, Lombard-street.
John Laidman, of Exeter, Esq.	Messrs. Clowes, Wedlake and Clowes, 10, King's Bench-walk
Robert Wilton, of Gloucester, Esq., (A. U. John Burrup, of 3, Berkeley-st., Gloucester, Esq.)	George Pleydell Wilton, 1, Raymond-buildings.
Edward Pollard, of Gloucester, Esq.	Messrs. Watson, Broughtons and Son, 5, Falcon-square.
Charles Seagrim, of Winchester, Esq. .. .	William Braikenridge, 16, Bartlett's-buildings, Holborn.
Francis Lewis Bodenham, of Hereford, Esq. ..	Messrs. Overton and Hughes, 25, Old Jewry.
Messrs. Longmore and Swoorder, of Hertford, ..	Messrs. Hawkins, Bloxam, Stocker and Bloxam, 2, New Boswell-court.
Edward Jackson, of Wisbeach, Esq.	Messrs. Wing and Twining, 1, Gray's Inn-square.
Henry Karslake, of 4, Regent-street, Waterloo-place, Esq.	Messrs. Palmer, France and Palmer, 24, Bedford-row.
Charles Spilman Todd, of Hull, Esq.	Messrs. Hicks and Marris, 5, Gray's-inn-square.
Robert Francis Yarker, of Ulverston, Esq., (A. U. John Wm. Richard Wilson, of Preston, Esq.)	Thomas Jones Mawe, 4, New Bridge-street, Blackfriars.
William Dewes, of Ashby-de-la-Zouch, Esq. ..	Messrs. Parker, Taylor and Rooke, 3, Raymond-buildings, Gray's Inn.
Maurice Peter Moore, of New Sleaford, Esq. (A. U. H. Williams, of Lincoln, Esq.)	Messrs. Taylor & Collisson, 28, Great James-street, Bedford-row.
Richard Mason, of Lincoln, Esq.	Messrs. Taylor & Collisson, 28, Great James-street, Bedford-row.
John Philip Dyett, sen., of Litchfield, Esq. ..	Messrs. Baxter, 48, Lincoln's Inn Fields.
{ Alexander John Baylis, Esq. 84, Basinghall-street }	Secondaries Office, 5, Basinghall-street.
{ John Adams Tilleard, Esq. 34, Old Jewry .. }	Messrs. James and William Burchell, 24, Red Lion-square.
C. B. Fox, of Newport, Esq., (A. U. Messrs. Prothero, Towgood, and Fox, of Newport) ..	George Hall, 11, New Boswell-court.
George Waugh Stable, of Newcastle-upon-Tyne, Esq.	John Stevenson, 3, King's-road, Bedford-row.
John Joseph Blake, Norwich, Esq. (A. U. Messrs. Adam Taylor and Sons, Norwich)	Messrs. Wood and Blake, 1, Falcon-street, Aldersgate-street.
Joseph Coleman, of Norwich, Esq.	John Mills, 3, Brunswick-place, City-road.
Henry Lamb, of Kettering, Esq.	Messrs. Grimaldi, Stables and Burn, 1, Capthall-

Northumberland	James Henry Hollis Atkinson, of Angerton, Esq.	..	..	..	..
Nottinghamshire	John Vere, of Carlton-upon-Trent, Esq.	..	..	..	..
Nottingham, Town of	John Barber, of Nottingham, Esq.	..	..	..	..
Oxfordshire	Henry Baskerville, of Crowsley-park, Henley-upon-Thames	..	..	..	..
Poole, Town of	George Anthony Adams, of Hamworthy, Poole, Esq.	..	..	..	..
Rutlandshire	Richard Lucas, of Edith Weston, Esq.	..	..	..	..
Shropshire	Joseph Venables Lovett, of Belmont, near Oswestry, Esq.	..	..	..	..
Somersetshire	John Matthew Quantock, of Norton Sub Hamdon, South Petherton, Esq.	..	..	..	..
Southampton, Town of	Henry Brett, of Southampton, Esq.	..	..	..	..
Staffordshire	Sir Edward Dolman Scott, of Great Barr, Bart.	..	..	..	..
Suffolk	Henry James Oakes, of Nowlon-court, Esq.	..	..	..	..
Surrey	Joseph Bonsor, of Poulsden, Esq.	..	..	..	..
Sussex	William Gratwicke Kingleside Gratwicke, of Ham, Esq.	..	..	..	..
Warwickshire	George Whieldon, of Springfield-house, Esq.	..	..	..	..
Westmoreland	The Right Hon. the Earl of Thanet	..	..	..	..
Wiltshire	Wadham Locke, of Ashton-house, Codford St. Peter, Esq.	..	..	..	..
Worcestershire	Edward Gresly Stone, of Chamber's-court, Longdon, Esq.	..	..	..	..
Worcester, City of	Edward Webb, of Worcester, Esq.	..	..	..	..
Yorkshire	Joseph Dent, of Ribston-park, Esq.	..	..	..	..
York, City of	George Townsend Andrews, of York, Esq.	..	..	..	..

NORTH WALES.

Anglesey	The Right Hon. Spencer Bulkeley Lord Newborough, of Trieddion	..	..	..	..
Carnarvonshire	Thomas Wright, of Derwenfawr, Carnarvon, Esq.	..	..	..	..
Denbighshire	Richard Lloyd Edwards, of Nanhorren, near Pwllheli, Carnarvonshire, Esq.	..	..	..	..
Fliathshire	Llewellyn Falkner Lloyd, of Nannerch, Esq.	..	..	..	..
Merionethshire	John Griffith Griffith, of Taltreuddyn-fawr, Esq.	..	..	..	..
Montgomeryshire	John Offey-Crewe Read, of Llandinam-hall, Esq.	..	..	..	..

SOUTH WALES.

Breconshire	Rhys Davies Powel, of Graig-y-Nos, Esq.	..	..	..	..
Cardiganshire	Matthew Davies, of Tanybwch, Aberystwyth, Esq.	..	..	..	..
Carmarthen, Borough of	Thomas Wilton, of Carmarthen, Esq.	..	..	..	..
Carmarthenshire	Sir James Cockburn, of Ddolgwn, Bart.	..	..	..	..
Glamorganshire	Nash Vaughan Edwards Vaughan, of Rheola, near Neath, Esq.	..	..	..	..
Haverfordwest, Town of	Francis Lemon, of Haverfordwest, Esq.	..	..	..	..
Pembrokeshire	William Henry Lewis, of Clynfiew, Esq.	..	..	..	..
Radnorshire	Henry Miles, of Downfield Kingston, Herefordshire, Esq.	..	..	..	..

This has been compiled by Mr. Leonard Laidman, Under-Sheriffs' Account Agent, and the List pub-
Masters, under the direction of the Judges of the Courts of Queen's Bench, Common Pleas, and

ANALYTICAL DIGEST OF CASES,
REPORTED IN ALL THE COURTS.

Courts of Common Law.

CONSTRUCTION OF STATUTES.

ANNUITY.

What a grant of an annuity within 53 G. 3,

c. 141.—Debt on a bond in the penal sum of 4,000*l.*, the condition of which bond, after re-
citing that the obligor was indebted to the
obligee in the sum of 2,000*l.*, and that the
latter had agreed to accept and take from the
former, interest for the same at the rate of 4*l.*
per cent per annum, payable half-yearly, during
the joint lives of the obligee and his wife, in

Charles Griffith, of Newcastle-upon-Tyne, Esq. ..	Messrs. Lawrence, Croy and Bowby, 25, Old Fish-street, Doctors' Commons.
Philip Richard Falkner, of Newark, Esq. (A. U. J. Brewster, of Nottingham, Esq.) ..	Messrs. Capes and Stuart, 1, Field-court, Gray's-inn.
Christopher Swann, of Nottingham, Esq. ..	Messrs. Holme, Loftus and Young, 10, New-inn.
Samuel Cooper, of Henley-upon-Thames, Esq. ..	Charles Berkeley, 52, Lincoln's-inn-fields.
Henry Mooring Aldridge, of Poole, Esq. ..	Messrs. Skilbeck and Hall, 19, Southampton-buildings, Chancery-lane.
John Torkington, of Stamford, Esq. ..	J. L. Wright, 2, South-square, Gray's-inn.
Messrs. Longueville and Williams, of Oswestry, (A. U. Joshua John Peele, of Shrewsbury, Esq.) ..	Messrs. Dean and Son, 16, Essex-street, Strand.
John Nicoletts, South Petherton, Esq. ..	Messrs. Dyne, 61, Lincoln's-inn-fields.
Richard Blanchard, of Southampton, Esq. ..	Messrs. Davis, Son and Campbell, 21, Warwick-street, Regent-street.
Robert William Hand, of Stafford, Esq. ..	Messrs. White, Eyre and White, 11, Bedford-row.
James Sparke, Esq. (firm Jackson, Spark and Holmes,) Bury St. Edmunds ..	Thomas Henry Dixon, 5, New Boswell-court.
Charles James Abbott, (firm Abbott, Jenkins and Abbott) New Inn, London ..	Messrs. Abbott, Jenkins and Abbott, New-inn Strand.
Richard Holmes, of Arundel, Esq. ..	Messrs. Palmer, France and Palmer, 24, Bedford-row.
Thomas Heath, of Warwick, Esq. ..	Messrs. Pittendreich and Stevenson, 14, South-square, Gray's-inn.
John Heelis, of Appleby, Esq. ..	George Mounsey Gray, 9, Staple-inn.
Gabriel Goldney, of Chippenham, Esq. ..	Messrs. Hillier, Lewis and Hillier, 6, Raymond-buildings.
Miles Manning Beale Cooper, of Upton-upon-Severn, Esq. ..	George Hall 11, New Boswell-court.
John Stallard, of Worcester, Esq. ..	Messrs. Plucknett and Adams, 17, Lincoln's-inn-fields.
John Coverdale, of 4, Bedford-row, (A. U. William Gray, of York, Esq.) ..	Messrs. Coverdale, Lee and Purvis, 4, Bedford-row.
John James Gutch, of York, Esq. ..	Messrs. Lowe, 2, Tanfield-court, will return Jury Process for Spring Assizes, 1847.
	None ever appointed.

NORTH WALES.

Robert Prichard, of Llwydiarth Esgob, Bangor, Esq. ..	Messrs. Gregory, Faulkner, Gregory and Skirrow, 1, Bedford Row.
John Millington, jun., of Carnarvon, Esq. ..	John Watson Walmsley, 12, New-inn, Strand.
James Vaughan Horn, of Vale-street, Denbigh, Esq. ..	James Molyneux Taylor, 11, Furnival's-inn.
R. Wynne Williams, the Temple, London, Esq., (A. U. C. W. Wyatt, St. Asaph, Esq.) ..	Messrs. Williams and M'Leod, 3, Paper-buildings, Temple.
John Jones, of Dolgelly, Esq. ..	Messrs. Sweeting and Byrne, Southampton-buildings, Chancery-lane.
William Yearsley, of Welchpool, Esq. ..	Edward Thomas Whitaker, 12, Lincoln's-inn-fields.

SOUTH WALES.

Thomas William Oakley, of Monmouth, Esq. (A. U. David Thomas, of Brecon, Esq. ..	Henry Hammond, 16, Furnival's-inn.
Frederick Rowland Robert, of Aberystwyth, Esq. ..	Messrs. Hawkins, Bloxam, Stocker and Bloxam, Boswell-court.
George Thomas, jun., of Lamas-street, Carmarthen, Esq. ..	Messrs. Rickards and Walker, 29, Lincoln's-inn-fields.
John Trail, of 4, Hare-court, Temple, London, Esq., (A. U. G. Thomas, Carmarthen, Esq.) ..	John Trail, 4, Hare-court, Temple.
Alexander Cuthbertson, of Neath, Esq. ..	Messrs. Rowland, Hacon and Rowland, 38, Thread-needle-street.
To whom all Writs must be sent. ..	No Agent ever appointed.
Thomas Morgan, of Cardigan, Esq. ..	Messrs. Jones, Trinder, Tudway and Eyre, 1, John-street, Bedford-row.
Benjamin Bodenham, of Kingston, Esq. ..	Messrs. Meredith and Reeve, 8, New-square, Lincoln's-inn.

lished by him also contains a statement of sheriffs', bailiffs', and auctioneers' fees, as now allowed by the Exchequer.

full satisfaction and discharge of the debt, provided the same were regularly paid, was declared to be, that if the obligor should pay the interest in the manner stipulated, the obligation should be void; but, in case of failure in payment of all or any part of the interest for 28 days next after each payment should become due, the same having been demanded, the bond

was to remain in full force. The condition further stated, that it was agreed that, in case of failure in making the several payments aforesaid, within the respective times aforesaid, the bond, or any payments made under the same, should not be construed or taken as a discharge of the debt of 2,000*l.*, or any part thereof, but the same should forthwith, after such default,

become due and payable to the obligee, his executors, &c. *Held*, on special demurrer to a plea alleging that the annual sum in the condition mentioned was granted for a pecuniary consideration, and that no memorial was inrolled pursuant to the 53 G. 3, c. 141, that this was not a grant of an annuity within that statute.

Whether the Annuity Acts apply to annuities granted in consideration of the forbearance of pre-existing debts—*quære*. *Marriage v. Marriage*, 1 C. B. 761.

Cases cited in the judgment: *Winter v. Mousely*, 2 B. & Ald. 802; *Cumberland v. Kelley*, 1 B. & Ad. 602.

BANKRUPT.

Reputed ownership of goods obtained by fraud.—*A* bought goods from *B*, with the fraudulent intention of never paying for them, and kept them until his bankruptcy. *Held*, that they did not pass to *A*'s assignees under the fiat as having been in his possession, order, and disposition as the reputed owner thereof, with the consent of the true owner. *Load v. Green*, 15 M. & W. 216.

Cases cited in the judgment: *Lyon v. Weldon*, 2 Bing. 244; *Milward v. Forbes*, 4 Esp. 171; *Sinclair v. Stevenson*, 2 Bing. 517; *Haswell v. Hunt*, 5 T. R. 231, a.; *Joy v. Campbell*, 1 Sch. & Lefroy, 336.

BUILDING ACT.

Venue.—The Building Act, 14 G. 3, c. 75, was an act "of a local and personal nature," and therefore, the power, given by the 100th section of that act, of pleading the general issue and giving the special matter in evidence, was taken away by the stat. 5 & 6 Vict. c. 97, s. 3.

The defence, that the venue in an action against a person for an act done in pursuance of the Building Act, 14 G. 3, c. 78, was not laid in Middlesex, pursuant to the 100th sect. of that act, is one which must be specially pleaded, and cannot be taken advantage of under not guilty. *Richards v. Eusto*, 15 M. & W. 244.

CHAPEL OF EASE.

Donative or presentative.—*Lapse.*—*Private statute.*—A private act of parliament, (7 G. 4, A. 1.) 1826,) after providing for a sale of glebe land, and the erection of an additional church with part of the proceeds, directed that the curate of the new church should, during the incumbency of *A*, the then rector, be appointed by him; and that, after the death, avoidance, or resignation of *A*, the new church should become the principal church, with all the accustomed rights, immunities, and privileges appertaining to a mother church, and the then church should become and be deemed a chapel of ease thereto, to be served by a minister capable of having cure of souls; and that "patronage of, or right of presentation to, the chapel, as well as the right of patronage of, or right of presentation to, the new church, should be vested in the patron of the rectory, his heirs and assigns, so, nevertheless, that the minister of the chapel should not be removable at plea-

sure." *Held*, that the chapel of ease thus created by the act was thereby made *presentative*, and not *donative*. And,

Semble, that, if it had been at first donative, it would have ceased to be so upon a presentation being once made by the patron to the ordinary, followed by the institution and induction of the presentee. *Reg. v. Foley*, 2 C. B. 664.

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1. *Designs.*—5 & 6 Vict. c. 100, and 6 & 7 Vict. c. 65.—*Quære*, whether a mechanical contrivance within the stem of a parasol for raising or lowering it with one hand is "a design for the shape or configuration of an article of manufacture," within the 5 & 6 Vict. c. 100, and 6 & 7 Vict. c. 65. *Millington v. Picken*, 1 C. B. 799.

2. *Dramatic representation.*—7 & 8 Vict. c. 57.—Plaintiff, under stat. 3 & 4 W. 4, c. 15, s. 2, recovered 12*l.* against defendant in an action of debt for six performances of a dramatic piece, of which plaintiff was the author, without plaintiff's consent; and the declaration averred that 40*s.* was the greatest damage sustained for each performance.

Held, that this was a debt recovered, within stat. 7 & 8 Vict. c. 96, s. 57, and that defendant could therefore not be taken upon a *ca. sa.* on such judgment. *Fitzball v. Brooke*, 6 Q. B. 873.

EXCISE.

Spirits.—*Importation from Channel Islands.*—Although stat. 3 & 4 W. 4, c. 52, s. 40, in general terms authorizes importing into the United Kingdom any goods of the produce or manufacture of Guernsey, Jersey, &c., from the said islands on payment of countervailing duties, such goods are, nevertheless, subject in this country to the internal regulations and restraints which may be imposed by the Commissioners of Excise, under sect. 52, so far as the same will apply to imported goods.

And the Commissioners of Excise having made an order that manufactured spirits of the Channel Islands of the denomination of British brandy, or British compounds, (defined by stat. 6 G. 4, c. 80, s. 101, and 5 & 6 Vict. c. 25, s. 6,) should not be admitted by permit into the stocks of rectifiers and dealers in the United Kingdom, but that plain spirits, certified to be the produce and manufacture of those islands, might be so admitted, subject to all the regulations affecting British plain spirits, and care being taken that, under this order, no rectified or coloured or compounded spirit should be admitted.

Held, that the commissioners might legally refuse to grant permits for delivery to a dealer in London of spirits imported from Jersey, on request notes which did not sufficiently describe the spirits to show that they were admissible under the order. Although, on application for a mandamus, it was stated on affidavit, that the spirits were in fact made of materials the growth, produce, and manufacture of Jersey, and of the United Kingdom; that the countervailing duty had been paid; and that delivery

warrants from the proper officer of the customs had been lodged at the Permit Office. *Reg. v. Excise Commissioners*, 6 Q. B. 975.

FRAUDS, STATUTE OF.

1. *Contract for an interest in lands.*—A count in assumpsit stated, that A. was the occupier of a farm as tenant to one V.; that B., the defendant, was desirous of renting the farm from V., and had applied to and requested A. to surrender and relinquish possession thereof to V., and to endeavour to prevail upon V. to accept of such surrender, and to accept B. as tenant in lieu of A.; and that, in consideration that A. would surrender and relinquish possession of the farm to V., and would also apply to V. and endeavour to prevail upon him to accept of such surrender, and to accept B. as tenant in lieu of the plaintiff, B. promised to pay A. 100l., when he should become such tenant. It then averred that A. did surrender and relinquish, &c., and did apply to and endeavour to prevail upon V. to accept of such surrender, and to accept B. as tenant in lieu of A.; and that V. accepted the surrender, and accepted B. as tenant; but B. refused to pay the 100l. *Held*, that this was a contract for an interest in or concerning lands; and therefore that the special count could only be proved by a note or memorandum in writing in conformity with the 4th section of the Statute of Frauds. But, *held*, that A. was entitled to recover the 100l. upon a count on an account stated, upon proof that B. had, since he obtained possession of the farm, acknowledged his liability, and promised to pay that sum. *Cocking v. Ward*, 1 C. B. 858.

Cases cited in the judgment: *Price v. Leyburn*, Gow's N. P. C. 109; *Griffith v. Young*, 12 East, 518; *Buttemere v. Hayes*, 6 M. & G. 54; *Knowles v. Michel*, 13 East 249; *Higmore v. Primrose*, 5 M. & Sel. 65; *Pinchon v. Chilcote*, 3 C. & P. 256; *Seago v. Deane*, 4 Bing. 459; 1 M. & P. 227; *Peacock v. Harris*, 10 East, 104.

FRAUDS IN MANUFACTURES ACTS.

Erroneous recital of repealed statute.—*Conviction.*—*Habeas Corpus.*—The stat. 17 G. 3, c. 56, is repealed, so far as relates to the distribution of the penalties imposed thereby, by the 58 G. 3, c. 51, notwithstanding the erroneous recital in the latter act of the 13th instead of the 17th G. 3.

A conviction under the 17 G. 3 c. 56, s. 10, for being in possession of materials suspected to be purloined or embezzled, purported to be made upon the information on oath of the informer and other witnesses, and concluded by directing that the penalty should be paid, applied, and distributed, as the law directs, according to the form and direction of the statute in such case made and provided.

Held, 1st, That as the application of the penalties was fixed by the statute, and the justices had no discretion therein, the conviction was sufficient in directing it to be paid, &c. as the law directs.

2ndly, That the conviction had not stated the ownership or value of the materials, nor the

defendant's knowledge of their having been purloined or embezzled; nor that the informer or witnesses were sworn in the presence of the accused; nor that the accused had not, when before the justices, applied, under the 12th section of the act, for time to produce the parties from whom he had the goods.

3rdly, That it was sufficient if the conviction followed in substance the form given by the statute; and that it was no objection to it, that it stated the information to have been on the oath of the informer and other witnesses, (for the purpose of excluding the informer from any share in the penalty); or that the conviction purported to have taken place in a township; or that the information on which the search-warrant was granted, stated only that the informer had cause to suspect, &c.

Quere, whether the validity of a conviction, when the right to remove it by *certiorari* is taken away by statute, can be questioned on motion for a *habeas corpus*, the commitment not being before the court. *Boothroyd, in re*, 15 M. & W. 1

See Bankrupt.

HIGHWAY ACT.

Judge's certificate.—*Costs under stat. 5 & 6 W. 4, c. 50, s. 95.*—The judge has no power to direct the costs of an indictment for non-repair of a road, preferred by the direction of justices, to be paid out of the highway-rate, except where there is a highway, and the liability to repair it is in dispute. Therefore, where defendants had been acquitted on the sole ground that the road in question was not a highway, and the judge certified for costs under this section, this court set the certificate aside. *Reg. v. Inhabitants of Heanor*, 6 Q. B. 745.

HORSE-RACING.

A bet of 10l. on a legal horse-race, is within the prohibition of the 9 Anne, c. 14, and therefore not recoverable in a court of law.

And the remedy given by the statute of Anne is not suspended by the operation of the 7 & 8 Vict. cc. 3 and 58. *Thorpe v. Coleman*, 1 C. B. 990.

Case cited in the judgment: *Applegarth v. Colley*, 10 M. & W. 729.

INCLOSURE ACT.

Construction of.—Certain waste lands in the manor of Shipley, to the soil of which, and everything constituting the soil, the lord of the manor was entitled, were, by an Inclosure Act, 55 G. 3, c. xviii., (which recited the lord's title,) taken away from the lord and allowed to commoners, except as saved by the 32nd clause. That clause reserved to the lord all mines and minerals, of what nature and kind soever, lying and being within or under the said commons or waste grounds, in as full, ample, and beneficial a manner, to all intents and purposes, as he could or might have held and enjoyed the same in case the said act had not been made; and enacted, that he should and might at all times hereafter have, hold, win, work, and enjoy exclusively all mines and minerals, of what

nature or kind soever, within or under the said commons and waste grounds, with full liberty of digging, sinking, searching for, winning, and working the said mines and minerals, and carrying away the lead ore, lead, coals, iron-stone, and fossils, to be gotten thereout: provided that the lord, in the searching for and working the said mines and minerals, should keep the first layer or stratum of earth separate and apart by itself, without mixing the same with the lower strata. The 33rd section provided for reimbursement to the owners of allotments, for injury done by searching for or working the mines and minerals: *Held*, that the reservation clause must be construed with reference to the title of the lord to the whole of the soil; and inasmuch as the object of the act was to give the commissioners the surface for cultivation, and leave in the lord what it did not take away for that purpose, the word "minerals" must be understood, not in its general sense, signifying substances containing metals, but in its proper sense, as including all fossil bodies or matters dug out of mines, that is, quarries or places where anything is dug; and this, notwithstanding the provision in the latter part of the clause, authorizing the carrying away the "lead ore, lead, coals, iron-stone, and fossils," as fossils may apply to stones dug in quarries: therefore, that this clause reserved to the lord the right to the stratum of stone in the inclosed lands. *Earl of Rosse v. Wainman*, 14 M. & W. 850.

INSOLVENT.

1. *For what debts discharged.*—Under the Insolvent Debtors Act, 1 & 2 Vict. c. 110, s. 75, the prisoner is discharged only as to the particular debts and sums of money mentioned in his schedule, to be due from him to his creditors named therein, and not generally as to all his debts then due to such creditors. *Leonard v. Baker*, 15 M. & W. 202.

Case cited in the judgment: *Tyers v. Stunt*, 7 Scott, 349.

2. *Remand by commissioner in bankruptcy after interim protection order*, 7 & 8 Vict. c. 96. —*Goods vested in provisional assignee.*—When a debtor who has been taken in execution comes before a commissioner in bankruptcy to be examined after an interim order for protection under stat. 7 & 8 Vict. c. 96, the commissioner has power to remand; and that authority is incident to his power of adjudicating on the petition, and is not limited to the cases enumerated in sect. 24. *Partington, ex parte*, 6 Q. B. 649.

3. *Habeas Corpus.*—*Quare*, whether the benefit of statute 7 & 8 Vict. c. 96, can be taken by a party whose effects are already vested in the provisional assignee of the Insolvent Debtors' Court, under statute 5 & 6 Vict. c. 116.

But the commissioner having, on petition under statute 7 & 8 Vict. c. 96, decided that the benefit of the act could not be so taken, and having therefore remanded the prisoner: *Held*, (on habeas corpus, and return of the commissioner's order, showing the facts,) that the

court could not review his decision. *Partington, ex parte*, 6 Q. B. 649.

INSOLVENT DEBTORS' ACT, (IRELAND).

Construction of.—An action of trespass cannot be maintained against a creditor, who, without malice, sues out a writ of *ca. sa.* upon a judgment regularly obtained by him against his debtor, after the debtor's discharge under the Irish Insolvent Debtors' Act, 3 & 4 Vict. c. 107. The 81st & 82nd sects. of that stat. do not render the writ absolutely illegal and void *ab initio*, but only give the debtor a remedy, by application to the court or a judge for his discharge out of custody. *Ewart v. Jones*, 14 M. & W. 774; S. C. 31 L. O. 115; 3 D. & L. 252; 32 L. O. 151, 563.

Cases cited in the judgment: *Tarlton v. Fisher*, 2 Doug. 676; *Yearsley v. Heene*, 14 M. & W. 322; *Barker v. Braham*, 3 Wils. 368; *Parsons v. Lloyd*, 3 Wils. 341.

INTERPLEADER ACT.

1. The Interpleader Act, 1 & 2 W. 4. c. 58, s. 1, does not apply in favour of a party who is sued by a person from whom he has bought goods, for the price, and also by third parties for the value of the goods in trover. *Slaney v. Sidney*, 14 M. & W. 800; S. C. 31 L. O. 202; 3 D. & L. 250; 32 L. O. 127, 540.

2. A judge's order, made under the 6th sect. of the Interpleader Act, directed that the goods should be sold by the sheriff, and the money paid into court to abide the event of an issue to be tried between the claimant and the execution creditor. The issue was tried, and a verdict found for the claimant, who thereupon brought an action of trespass against the sheriff, for breaking and entering his dwelling-house, and seizing his goods and converting them to his own use. The court made absolute a rule for striking out so much of the declaration as charged the seizure and conversion of the goods.

And *semble*, (per *Alderson*, B. and *Rolfe*, B.), the proceedings in such a case to be stayed altogether. *Abbott v. Richards*, 15 M. & W. 194.

LIMITATIONS, STATUTE OF.

1. *Acknowledgment.*—The following letter written by the defendant to a clerk of the plaintiff, in answer to an application for payment of the debt: *Held*, not sufficient to defeat a plea of the Statute of Limitations: "I will not fail to meet Mr. H. (the plaintiff) on fair terms, and have now a hope that before perhaps week from this date I shall have it in my power to pay him, at all events, a portion of the debt, when we shall settle about the liquidation of the balance." *Hart v. Prendergast*, 14 M. & W. 741.

Cases cited in the judgment: *Tanner v. Smart*, 6 B. & C. 603; 9 D. & R. 549; *Gardner v. M'Mahon*, 3 Q. B. 561; 2 G. & D. 593.

2. *Part payments where there are two debts.*—*Semble*, that where there are two clear and undisputed debts, the case is not taken out of the Statute of Limitations as to either debt, by evidence of a part payment within six years,

not specifically appropriated to the one debt or to the other.

To debt for principal and interest on a promissory note for 130*l.*, dated in 1827, with a count for work and labour, the defendant in 1845, pleaded respectively *non fecit*, and *nunquam indebitatus*, and to the whole, the Statute of Limitations. At the trial the note was duly proved; and it appeared, that in 1834 there had been a settlement of interest thereon, but that although small sums of money had occasionally been handed by the defendant to the plaintiff, there had been no *specific* payment of the note since that period.

Besides the principal and interest on the note, the plaintiff claimed to be entitled to recover wages as a domestic servant from 1827 to Oct. 1844. There was conflicting evidence as to the terms upon which the plaintiff, who was a distant relation of the defendant, had become an inmate of his house, the defendant insisting that there had been no contract for wages, and that the occasional payments relied on by the plaintiff, were mere donations.

The jury found a verdict for the plaintiff for wages, at the rate of 7*l.* *per annum* for the first eleven years, and at 5*l.* *per annum* for the last six; and as to the count on the note, it was reserved for the court to say whether or not there was any evidence from which a jury would be warranted in inferring that the payments proved, had been made on account of the debt due on the note; with liberty to the defendant to move to reduce the verdict:

Held, that inasmuch as the defendant had, throughout, denied the existence of any debt for wages, the jury were warranted in finding the payments to have been part payments on account of the note; and consequently, that the plaintiff was entitled to retain his verdict in respect of so much of the issues as related to the first count, and for wages for the last six years in respect of those parts of the issues which related to the second count. *Burn v. Boulton*, 2 C. B. 476.

PILOT ACT.

Construction of.—The 2nd section of the Pilot Act, 6 G. 4, c. 125, enacts, that all vessels sailing, as well up and down, or upon the rivers Thames or Medway, &c., between Orfordness and London Bridge, to the Downs, &c., (except as hereinafter provided,) shall be piloted by pilots licensed by the Trinity House. The 58th section imposes penalties on masters acting as pilots, after a licensed pilot has offered to take charge of the vessel. Section 62 provides, "that nothing in that act contained shall extend, or be construed to extend, to subject to any penalty the master or mate of any ship or vessel, being the owner or part owner of such ship or vessel, and residing at Dover, Deal, or the Isle of Thanet, for conducting or piloting such his own ship or vessel from any one of the places aforesaid, up or down the rivers Thames or Medway, or into or out of any port or place within the jurisdiction of the Cinque Ports:" *Held*, that the "places aforesaid," in the section,

mean Dover, Deal, and the Isle of Thanet; that, therefore, the clause excepts from penalties such masters only as navigate their vessels from Dover, Deal, or the Isle of Thanet; and, consequently, that the penalties imposed by section 58 were recoverable from a master piloting his own vessel on a foreign voyage commencing in the port of London, although he was a part owner, and resident in the Isle of Thanet. *Williams v. Newton*, 14 M. & W. 747.

Case cited in the judgment: *Hammond v. Tremayne*, Chitt. Stat. 917, n.

POLICE ACT.

Justification, having view of offence.—Owner of house disturbed.—The 54th section of the Metropolitan Police Act, (2 & 3 Vict. c. 47,) imposes a penalty upon any person who shall wilfully and wantonly disturb any inhabitant by pulling or ringing any door bell, or knocking at any door, without lawful excuse, and section 63 empowers any constable belonging to the metropolitan-police district to take into custody, without warrant, any person who shall, "within view" of such constable, offend against the act.

Section 66 enacts, "that any person found committing any offence punishable either upon indictment or as a misdemeanor upon summary conviction, by virtue of this act, may be taken into custody, without a warrant, by any constable, or may be apprehended by the owner of the property on or with respect to which the offence shall be committed, or by his servant, or any person authorized by him, and may be detained until he can be delivered into the custody of a constable to be dealt with according to law."

In trespass by A. against B. for false imprisonment, B. was justified on the ground of A. having wilfully and without excuse, *within view of the constable who apprehended her*, annoyed and disturbed the defendant and his family by knocking and ringing at his door: *Held*, that, to support this plea under sections 54 and 63, it was necessary to prove the offence to have been committed within view of the constable. And, *held*, that the plea afforded no justification, under section 66, inasmuch as it did not allege that A. was "found committing" the offence at the time of apprehension, or that B. was the owner of the property on, or with respect to which the offence was committed. *Sinmons v. Millingen*, 2 C. B. 524.

RAILWAY.

1. *Sale of Shares.*—The 26th section of the Joint Stock Registration Act, (7 & 8 Vict. c. 100,) which prohibits the sale of shares before complete registration in any joint-stock company formed after the 1st November, 1844, does not apply to railway companies requiring an act of parliament. *Young v. Smith*, 15 M. & W. 121.

2. *Joint Stock Companies' Registration Act.*—The Leeds and Bradford Railway Company was incorporated by act of Parliament before the

RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Dingwall v. Hemming. Feb. 24th, 1847.

NEW ORDERS (NO. 125).—COSTS OF BILL OF DISCOVERY.—ATTACHMENT.

The 125th Order of May, 1845, is not applicable to the case of a plaintiff at law, being also a defendant in equity, who files a bill for discovery in aid of his action, although the subject-matter is the same in the action and suit. Therefore, a defendant, when he has put in his answer to such a bill, may obtain an order of course for the payment of his costs, and a writ of attachment may be issued on nonpayment.

This was an appeal from the Vice-Chancellor of England, who had decided that under the circumstances reported below, the 125th of the New General Orders was applicable, and that the 41st Order of August, 1841, was, as being inconsistent with the above, abrogated and discharged by the latter part of the 1st of the New Orders.

Mr. Roll for the defendant stated, that the plaintiff, Dingwall, had brought an action against Hemming and another, executors and devisees in trust of a certain testator, to restrain which they had filed a bill against Dingwall, praying relief and the common injunction. Subsequently to the dissolution of this injunction, Dingwall filed his present bill for discovery in aid of his action, but not referring to or mentioning the defendant's bill. After putting in his answer to the bill of discovery, the defendant obtained an order of course for his costs, and upon the nonpayment of them, sued out a writ of attachment, under which Dingwall was taken and imprisoned. Upon motion before the Vice-Chancellor of England, on the 18th instant, his Honour held, that it was irregular to obtain an order of course for the costs of the defendant's answer to the bill of discovery, as the plaintiff, being also a defendant to a bill of relief, came within the application of the 125th Order of May, 1845, which declares that "the costs of a bill of discovery filed by any defendant to a bill for relief are to be costs in the original cause, unless the court otherwise orders." His Honour was of opinion that this order virtually repealed the 41st of those of August, 1841; viz.,—"That where a defendant in equity files a cross bill against the plaintiff in equity for discovery only, the costs of such bill and of the answer thereto, shall be in the discretion of the court at the hearing of the original cause." The order of course obtained by Hemming was consequently discharged, and Dingwall released from prison.

Mr. Roll submitted, that his Honour's decision was erroneous; that the 125th Order

does not apply to the case of a plaintiff at law filing a bill for discovery in aid of his action; and that he was not brought within its application by the circumstance of being made a defendant to a bill for relief filed against him by the defendant at law.

Mr. Stuart and Mr. Southgate relied upon the difference in the wording of the two general orders. That of the 125th Order was sufficiently general to include the present case. The subject-matter was the same in the action and in the suit. At all events, the defendant to the bill of discovery should have given notice to the plaintiff of the application to obtain an order for payment of the costs, and ought not to have proceeded *ex parte*, as the defendant was aware that doubts on this subject existed amongst the clerks of records and writs.

The case of *Westfield v. Skipwith*, 1 Phil. 277, was cited during the argument.

The Lord Chancellor, without hearing a reply, observed that it was plain the 125th of the new orders referred only to a bill for discovery, in aid of the suit, as otherwise, it would extend to all bills of discovery, even to cases unconnected with the suit; and thus payment of the costs might be delayed until the hearing of a suit not relating to the bill of discovery. The words "cross bill" mentioned in the 41st Order of August, 1841, are not mentioned in the 125th of the New Orders. In the present instance no allusion is made to the original suit in the bill of discovery; in fact the latter was in aid of the proceedings at law and unconnected with that suit. Unless prevented by the new orders, a defendant to a bill of discovery is entitled to his costs as of course, the order for which, if irregular, may be set aside.

His Lordship therefore discharged his Honour's order of the 18th instant, but refused Mr. Roll's application for an order to resume proceedings against Dingwall under the former process, and remarked that the effect of the present decree would be to undo the consequences of the Vice-Chancellor's.

The costs in the court below were not given, Mr. Southgate having suggested that they were not asked for in the notice of this motion.

Rolls Court.

Mostyn v. Spencer. Feb. 3rd, 1847.

PAYMENT OUT OF COURT.

Money paid into court in a suit to which three persons were parties will not be directed to be paid out to two of such persons only upon motion.

THIS was a motion to pay out of court a sum of money under the following circumstances:—Lord Mostyn was surety for a person of the name of Pugh, who was indebted to the then existing Bank of Manchester. The bank brought an action against Lord Mostyn, whereupon he filed his bill against Spencer, the officer of the bank in whose name the action was brought, and Pugh, in which he obtained an injunction against the bank on terms of

bringing the money into court. Reference had been made to the Master in the suit, and he had made his report, to which exceptions had been taken, but not disposed of. Pugh was now dead, and Lord Mostyn and Mr. Spencer had agreed that the money in court should be divided between them, and the present motion sought to carry out that arrangement.

Mr. Craig for the motion.

Mr. Teed appeared to consent on the part of Mr. Spencer, but suggested that there was a difficulty in directing money in which, upon the record, three parties appeared to have an interest, to be paid out to two of them only upon motion.

Lord Langdale said that the proper course would be to set the cause down as a short cause on the exceptions, and for further directions, when such order might be made, as the circumstances required.

Vice-Chancellor Knight Bruce.

Morrison v. Morrison. Jan. 25th, 1847.

LAW OF CHINA.

Mr. Wigram, for the plaintiff, said, the bill was filed by Mrs. Morrison, widow of the late Dr. Morrison, who died in China in 1836, having previously made his will, appointing Mrs. Morrison executrix. The plaintiff proved the will. In 1843, John Robert Morrison, (eldest son of the late Dr. Morrison, and Member of the British Council in China,) died; his will, however, not having been found for some time, it was concluded that he had died intestate. Under this impression, letters of administration were granted by the Ecclesiastical Court in England to Mary Rebecca Morrison, as heiress-at-law, she being only sister of John Robert Morrison, the children of Dr. Morrison and his first wife. The whole of the property, real and personal, was sold by the agents in China, and a portion of the assets realized paid to Mary R. Morrison, as administratrix. Eventually the will of J. R. Morrison was discovered in China, forwarded to England, and delivered to the family. It was then found that the testator had died possessed of certain landed property in China, and a considerable sum of money, amounting to several thousand Spanish dollars; that he had admitted himself indebted to his father's estate in various sums, had made bequests to his step-mother and his brothers and sisters, and had appointed the plaintiff executrix of his will. The letters of administration granted to Mary R. Morrison were revoked, the plaintiff proved the will, and instituted the present suit, and prayed that it might be referred to the Master, to take an account of the assets derived from the estate of J. R. Morrison, that the sum which she might be found entitled to be paid to her, and that the respective interests of the defendants might be ascertained.

The Vice-Chancellor. A question of domicile may arise here; it is doubtful whether the testator was not a Chinese subject.

Mr. Wigram. He was, no doubt, born in England, and a British subject.

The Vice-Chancellor. I do not mean to say he was a Chinese born subject; but the Emperor of China has, I apprehend, authority over all persons who settle in his dominions.

Mr. Wigram. By certain treaties, different parts of China have become British settlements.

The Vice-Chancellor. In the celebrated case of Colonel Thornton, who died in France, a question arose as to his domicile, whether he was not in fact a French subject, and whether his property should not be administered according to the provisions of the French law. I should wish to hear something of the Chinese law, if such information can be afforded.

Mr. Wigram submitted that the testator might be considered, for the purposes of his will, domiciled in England, and then read the proposed minutes of reference to the Master.

Mr. Temple, (with whom was Mr. Egan,) for the defendants, submitted that minutes asking an inquiry whether the property had been properly sold, should be altered. The sale in China took place under the impression that Mr. J. R. Morrison had died intestate. The assets were received by Miss Morrison, under that impression, and therefore Miss Morrison should only be required to account for the moneys received under these peculiar circumstances.

The Vice-Chancellor was of opinion that the Master should be directed, in making his report, to state special circumstances, and particularly whether the land in China was freehold or leasehold.

Vice-Chancellor Wigram.

Swinnerton v. Heming. Feb. 9th, 1847.

AWARD.—SUBMISSION.—CONSTRUCTION.—
9 & 10 W. 3, c. 15, s. 2.

It is unnecessary that a party desirous of making a submission to an award a rule of court, should apply within the period limited by the 9 & 10 W. 3, c. 15, s. 2, for setting aside the award. Where the notice of motion stated that the application would be made to make the "submission and the award" a rule of court, it was held, that "the submission" alone could be made a rule of court.

Mr. James Parker and Mr. Metcalfe, in favour of whose clients the award had been made, moved to make the submission to it a rule of court. The facts of the case will be found reported in 2 Phillips, 79. The suit was instituted in March, 1843. The matters were referred to arbitration, and the award was made in March, 1845. It was contended that either party was at liberty to apply to make the submission a rule of court within any reasonable period after the award was made, no time being limited by the statute 9 & 10 W. 3, c. 15. Watson on Awards, pp. 43, 267; *Williamson v. Page*, 1 Hare, 267; *Pownall v. King*, 6 Ves. 10; *Smith v. Symes*, 5 Madd. 74. The award could not be enforced until the submission was made a rule of court.

Mr. Roll and Mr. Wright opposed the motion, which they submitted was to be

Williams, Esq., one of the Judges of her Majesty's Court of Common Pleas.

The Queen was, on Feb. 24th, pleased to confer the honour of Knighthood upon David Dundas, Esq., her Majesty's Solicitor-General.

The Queen was, on Feb. 24th, pleased to confer the honour of Knighthood upon Christopher Rawlinson, Esq., Recorder of Prince of Wales's Island, Singapore and Malacca.

The Queen has been pleased to appoint James Watson Sheriff, Esq., to be her Majesty's Solicitor-General for the Island of Antigua.—From the *London Gazette*, of 26th Feb.

PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

House of Lords.

NEW BILLS IN PROGRESS.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy, Abolishing Court of Review, and Reducing Number of Commissioners. For 2nd reading. Lord Brougham. See the bill, p. 411, *ante*.

Custody of Offenders. For 2nd reading. Earl Grey.

Government of Prisoners. For 2nd reading. Earl Grey.

House of Commons.

NEW BILLS IN PROGRESS.

City Small Debts Court. In Committee. Mr. Masterman.

Drainage of Land Act Amendment. For 2nd reading. Sir G. Grey.

Law of Railways. For 2nd reading. Mr. Strutt.

Agricultural Tenant-right. For 2nd reading. Mr. Strutt.

Roman Catholics Relief. In Committee. Mr. Watson.

Pious and Charitable Property. For 2nd reading. Lord J. Manners.

Rating Small Tenements. For 2nd reading. Mr. Waddington.

Markets and Fairs Clauses.—Public Undertakings Clauses.—Gas Works Clauses.—Waterworks Clauses.—Further consideration of Report. Mr. Strutt.

For the Speedy Trial and Punishment of Juvenile Offenders. For 2nd reading. Sir John Pakington.

NOTICES OF NEW BILLS.

To Encourage Life Insurance. Mr. Godson.
Total Repeal of Punishment of Death. Mr. Ewart.

REPEAL OF CERTIFICATE DUTY.

	Signatures.
Former petitions, 10,	145
Feb. 25.—Attorneys and Solicitors of Devises, (Mr. Bruges)	14
Feb. 26.—Attorneys and Solicitors of York	36
Total petitions, 11	195

THE EDITOR'S LETTER BOX.

SMALL DEBTS ACT.

A CORRESPONDENT, in reference to proceedings in the County Courts, inquires what will become of the actions in existence in those courts when the New Small Debts Act comes into operation? The act, he observes, is, like many others, exceedingly defective, so much so that no two opinions agree upon its construction. It seems that by the new act it was intended to abolish the old County Court, and to make a new one in the place of it; but that, for anything he can see in the statute, the old practice and proceedings may continue just as if that act had not been passed.

The judges have been engaged in settling the rules and regulations relating to the practice under the Small Debts Act; but the *Orders of Council* by which the courts are to be constituted have not yet been made, and we think cannot be made until after the 6th March. It is not usual for the judges to make rules for courts which, though soon intended to be formed, are not yet in existence.

The delay in appointing the judges and officers of the courts, about which so many inquiries have been made, is probably owing to the same cause.

JUDGES OF THE SMALL DEBT COURTS.

It is confidently stated that the following gentlemen have been appointed judges under the Small Debts Act:—Sergeants Manning, Storks, Herbert Jones, and Clarke. Messrs. Starkie, Q. C., (Clerkenwell); Chilton, Q. C.; Koe, Q. C.; Amos; Espinasse, (Kent); Gale; Leahy, (Greenwich and Lambeth); Francillon, (Gloucester); Corbet, (Shropshire); Trafford, (Birmingham); Gurdon, (Essex); Clive, (Hammersmith.)

Since writing the above, we find that the Rules have been published in the *Morning Chronicle*. We therefore do not hesitate to place them before our readers. There will be Forms of Proceeding to be added, which we shall include in an early number.

The conclusion of the List of Attorneys to be admitted in next Easter Term, has been deferred to make room for the Small Debts Bill.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

—————
SATURDAY, MARCH 13, 1847.
—————

———"Quod magis ad nos
Pertinet, et necire malum est, agitamus."

HORAT.

THE NEW BANKRUPTCY AND INSOLVENCY BILL.

LORD BROUGHAM has fairly got the start of the Lord Chancellor in this matter. The Chancellor, at the commencement of the week, according to the reports of the daily newspapers, informed the House of Lords that he hoped before long to lay on the table a bill on that important and difficult subject the Law of Bankruptcy and Insolvency, and before the week was out, the Ex-Chancellor had prepared and laid on the table the bill, the principal provisions of which were published in our number of Saturday last, (page 411). At the outset we must do Lord Brougham the justice to admit, that in the somewhat sweeping measure now propounded he evinces a total absence of that undue bias which persons, more liable to be affected by human weaknesses, or less patriotic, constantly manifest in favour of their own offspring. What he erected he proposes to pull down. What he created he seeks to destroy. No blindness is exhibited with regard to the defects of existing institutions because he happens to be the founder. He seems unreservedly determined to undo all he has been doing for the last ten years!

By the new bill the acts of 1842 and 1844, so far as they relate to insolvency and insolvent debtors, are repealed, and this branch of the jurisdiction of the Court of Bankruptcy lopped off. The Court of Review is abolished with a single stroke. The Subdivision Courts are annihilated. The jurisdiction of the Court for the Relief of Insolvent Debtors is restricted to cases where insolvents have resided for twelve

months in some one of sixteen counties which are specified, and the jurisdiction in insolvent cases arising, in other counties, is conferred upon the judges of the New County Courts. As for judges, commissioners, registrars, *et hoc genus omne*, in dealing with them his lordship seems desirous to illustrate the application of the principle, sometimes questioned in relation to property, that a man may do as he likes with his own. Those grave dignitaries and useful ministers are cashiered, removed, displaced, translated, and disposed of, after a fashion which revives the memory of the homely and now almost forgotten game of nine pins! And if ever the metamorphose should be completed, will enable them to realise the Irish gentleman's doubt as to his own identity.

The present state of the law in matters of bankruptcy and insolvency is so objectionable, that it would be difficult, perhaps, to propose any measure affecting it, and involving extensive alterations, which could fail to operate as an improvement to some extent. Several of the changes now proposed by Lord Brougham have been repeatedly discussed in this publication. The palpable absurdity, observed upon in some recent numbers,* of depriving an effective tribunal of its business, and transferring the jurisdiction to a court established for different purposes, is distinctly admitted by the preamble of Lord Brougham's bill, which recites, that the jurisdiction in matters of insolvency given to the Courts of Bankruptcy "is attended with inconvenience to the suitors in those courts, and is prejudicial to such courts as courts for

* *Ante*, pages 1, 145, & 241.

the administration of bankrupts' estates, and the distribution of assets." But in repealing the acts under which the Court of Bankruptcy exercised jurisdiction in matters of insolvency, and dividing the jurisdiction for the future between the Court for the Relief of Insolvent Debtors and the judges of the County Courts, his lordship seeks to revive and engraft on the new jurisdiction one of the most objectionable provisions of the condemned and repealed law.

The 4th clause of the bill provides, that "forthwith after the filing of the petition of any insolvent debtor," the Court for Relief of Insolvent Debtors and the judges of County Courts shall have power to make an interim order protecting the insolvent debtor from arrest, and, if he be a prisoner in execution upon any judgment for a debt mentioned in his schedule, ordering his discharge. Under a similar provision in the stat. 7 & 8 Vict. c. 96, as our readers may recollect, in the autumn of 1844, there was a general gaol delivery of debtors, many of whom are to this day supporting the British character abroad by a liberal expenditure of their creditors' property in the *cafés* of Paris and Brussels. It occasioned, as it well might, infinite dissatisfaction and alarm, when it was discovered that a debtor whom one of the superior courts had adjudged should be committed to prison until he satisfied a just debt, and who was thereupon committed, might, upon his mere application, obtain a discharge from custody, and be found next day strolling unconcernedly in the park, with an interim order in his coat pocket, laughing at the creditor who had fruitlessly expended his money in procuring the adjudication of the superior court, and the subsequent caption of the debtor. To mitigate in some degree the scandal which such a state of the law occasioned, the Bankrupt Commissioners, in Dec., 1844, took upon themselves to refuse granting an interim order to a prisoner in execution, until he had given such a notice to the detaining creditor as would enable the latter, if he thought fit, to be heard against the immediate discharge of the debtor. How far such a regulation may be deemed an excess of authority on the part of those who were invested with the power of granting interim orders, we shall not stay to examine: the rule was *pro tanto* just and reasonable.

Lord Brougham, in his new bill, proposes to substitute for it a device, which,

with due deference, strikes us to be one of the most clumsy and inefficient that could have been conceived. The application of a debtor for his protecting order, or his discharge from custody if in execution, according to the new bill, is again to be *ex parte* and behind the backs of all his creditors, but it is suggested that he should sign a written undertaking to attend at any time when required by the court, and the wilful breach of this undertaking is to be a misdemeanour punishable by imprisonment at the discretion of the judge trying the same! An encouraging prospect is thus opened to a creditor who has already lost his debt and the costs of obtaining a judgment; if he can find his debtor, he will be at liberty to prosecute an indictment against him at his (the creditor's) expense, (for no costs are in general allowed upon indictments for misdemeanours,) and if a jury can be found to convict for the new-fangled crime of wilfully neglecting to appear upon an undertaking, the debtor may again be shown his way to prison.

The reduction of the number of town commissioners to three, as contemplated by the new bill, possibly suggested, as almost a necessary consequence, the abolition of Subdivision Courts, which, under the existing law,^b require the attendance of three commissioners. We doubt if any portion of the present system affords less reason for complaint than that by which, on disputed questions as to the admissibility of a debt, or where a commissioner is urged, on the examination of a bankrupt, or other person, to exercise the formidable power of committal, there is power to submit the point to the united judgment of three commissioners, with an appeal, restricted, however, to any matter of law or equity, or the rejection or admission of evidence. So far from desiring to see Subdivision Courts put an end to, we have reason to know it to be the opinion of many practical men, that no alteration in the mode of administering this branch of the law can be satisfactory, which does not comprehend some arrangement by which the principal stages in a bankruptcy proceeding may be submitted to the supervision of a court constituted with as much judicial strength as the Subdivision Courts, leaving private meetings and proceedings of subordinate importance to be conducted under the presidency of a single commissioner.

^b See 1 W. 4, c. 56, and 5 & 6 W. 4, c. 29, s. 23.

The existing law is notoriously defective in confining the right of appeal in the most important of all the proceedings in bankruptcy—the granting or refusing a certificate—to cases in which creditors are dissatisfied, and petition against the allowance. Where the certificate is refused, the bankrupt is left without appeal, and we might almost add, without hope! Lord Brougham's bill aggravates the evil by denying an appeal in *any* case. The 6th section expressly provides, "that no appeal shall be competent against the decision or order of any commissioner as to the allowance or suspension of any bankrupt's certificate, his decision as to which shall be final and complete," and require no confirmation. In exercising his judicial discretion in granting or refusing a certificate, the commissioner is required to consider, not merely whether the bankrupt has made a full and true disclosure of his estate, but his judgment is to be founded on a consideration of the whole of the bankrupt's conduct "as a trader before, as well as after his bankruptcy." The application for a bankrupt's certificate, therefore, involves a consideration of the principles upon which trade and commerce are and ought to be conducted; and recollecting how complicated are the relations of commerce, and what an infinite variety of circumstances influence the conduct of men engaged in trade, perhaps no questions of greater difficulty and delicacy can be submitted to a judicial tribunal. If judged of only with reference to the immediate consequences of allowing or refusing the certificate, the importance of the question, as well to the creditors as to the bankrupt, can scarcely be exaggerated. If the certificate be allowed, the creditors are debarred from all further remedy against the bankrupt, who obtains indemnity for the past and security for the future. On the other hand, if the certificate be refused, the bankrupt is exposed to the danger of being thrown into prison by any execution creditor who has not proved his debt, and besides being deprived of all the property he possessed, he is prevented—let the amount of his energy or his diligence be ever so great—from acquiring any property hereafter. In short, an uncertificated bankrupt is a doomed beggar! Now, we have no intention of disparaging those learned persons who hold, or may hereafter hold, the office of Commissioners of Bankrupt, but we venture to look upon it as a monstrous anomaly, that a power, the

exercise of which involves such important consequences, should be left to the discretion of a single commissioner, without the possibility of controlling, correcting, or reviewing his decision.

In this, as in every other particular, Lord Brougham's bill indicates the total absence of any definite principle. It is a patchwork measure, and the public and the profession have had too much of this already, as regards the Law of Bankruptcy and Insolvency.

There is one class of functionaries who seem to be so peculiarly the objects of solicitude to those who framed the bill, that we have heard it denominated "the Registrar's bill." Under the 8th sect., "*William Scrope Ayrton*, one of the Registrars of the Court of Bankruptcy now in attendance on the Court of Review, and *John Campbell*, the senior of the Registrars now in attendance on the Courts of the Commissioners, shall retire, and *William Vizard* the younger, the other Registrar in attendance on the Court of Review, shall thenceforth be transferred to and act in the court in which the said *John Campbell* has heretofore acted." Again, by the 12th section, "the office of Chief Registrar, now held by *Edward Hobson Vitruvius Lawes*, Sergeant-at-Law, shall be, and the same is hereby abolished," and the duties transferred to the Master; and the 17th section enacts, that as the number of commissioners acting in London is reduced by deaths, resignations, retirements, promotions, or removals, as before provided, *William Henry Whitehead*, *John Fisher Miller*, and *William Vizard* the younger," shall, in the order of their seniority, be entitled to retire. Whilst the 22nd section provides, that there shall be paid to each of those persons above enumerated, "an annuity, or clear yearly sum of money during the term of their lives, or the same amount as the salaries to which they may respectively be entitled at the time of the passing of this act." Considering that some of those whose names are distinguished above, as in the act, by italics, are not very old public servants, it must be confessed, that whatever other interests have been overlooked, the noble framer has not permitted theirs to be neglected; but we are at a loss to understand how the public is to be benefited by converting so many able and active officers into sinecurists.

COMMON LAW PRACTICE.

REVERSAL OF OUTLAWRY ON ERROR.

THE number of the Queen's Bench Reports published during the past week furnishes an instance^c of the reversal of a judgment of outlawry, after a lapse of above a century, under circumstances singular in a legal view, and not altogether devoid of historical interest.

Philip Duke of Wharton, having attached himself to the cause of the Pretender in 1727, joined the Spanish army,^d then besieging the King of England's fortress of Gibraltar, and was outlawed by judgment of the Coroners of Middlesex, on the 3rd April, 1729, for not appearing to answer an indictment for high treason. King George the Second, by letters patent, reciting the indictment and outlawry, granted the real and personal estate of the duke to trustees for the payment of his debts, and the surplus for the benefit of his two sisters, both of whom died without issue. Colonel Tynte, the present appellant, claims the Barony of Wharton through one of the daughters of the fourth Lord Wharton, the grandfather of the outlawed duke. Upon the investigation of this claim by a Committee of Privileges of the House of Lords, it was suggested that the barony was forfeited by the outlawry; but on behalf of Col. Tynte it was contended, that the outlawry must be considered as a nullity, being void by statute for a defect apparent on the face of it. The committee, however, held, that they had no power to reverse the outlawry, and that it was not possible to treat it as a nullity whilst it continued unreversed,^d the more particularly as it had been recognised in the patent granted by Geo. 2. Under these circumstances, in Michaelmas Term, 1844, Col. Tynte brought his writ of error in the Court of Queen's Bench, reciting, that "in the record and process, and also in the publication of the outlawry, manifest error hath intervened, to the great damage of the said Philip Duke of Wharton in his lifetime, and of Charles Kemeys Kemeys Tynte, one of the co-heirs of the said Philip Duke of Wharton since his death." The copies of the roll of judgment in outlawry were certified by an assistant keeper of the public records, under the stat. 1 & 2 Vict. c. 94, ss. 12 & 13, the original being in the public record office, in the custody of the Master of the Rolls. There were several errors assigned, but that on which the judgment of the court proceeded was, that the record of the judgment of outlawry did not contain an award of a writ of proclamation, which is rendered necessary by statute 4 & 5 W. & M. c. 22, s. 4, which,

after reciting, that it is agreeable to justice that proceedings to outlawries in criminal causes should be as public and notorious as in civil causes, proceeds to enact, that upon the issuing of any exigent against any person for any criminal matter before judgment or conviction, there shall issue a writ of proclamation, bearing the same *teste* and *return*, directed to the sheriff of the county where the person named in the record is said to inhabit, according to the stat. 31 Eliz. c. 3, which writ of proclamation shall be delivered to the sheriff three months before the return of the same.

The counsel for the crown admitted that they were unable to support the judgment of outlawry, for want of the award of the writ of proclamation, and that there were other objections difficult to meet; and the Court of Queen's Bench, after ascertaining that the objection which was admitted to exist was properly assigned as error, gave judgment that the outlawry, "for the errors aforesaid, and other errors in the record and proceedings aforesaid, be reversed, annulled, and altogether held for nothing, and that the said C. K. K. Tynte be restored to all things which he had lost by occasion of the said outlawry, &c."

ORDER FOR FURTHER TRANSFER OF CHANCERY CAUSES.

Saturday, 6th March, 1847.

WHEREAS, from the present state of the business before the Lord Chancellor and the Master of the Rolls respectively, it is expedient that a portion of the causes set down to be heard before the Master of the Rolls should be transferred to the Lord Chancellor's Book of Causes for hearing: Now we do hereby order, that the several causes set forth in the schedule hereunto subjoined be accordingly transferred from the Book of Causes of the Master of the Rolls to that of the Lord Chancellor. And we do further order, that the causes so to be transferred, (although the bills therein may have been marked for the Master of the Rolls under the orders of court of the 5th May, 1837, and notwithstanding any decrees or orders therein made by the Master of the Rolls,) shall hereafter be considered and taken as causes originally marked for the Lord Chancellor, and be subject to the same regulations as all causes marked for the Lord Chancellor are subject to by the same orders. Provided, nevertheless, that no decree or order made by the Master of the Rolls in any of such causes shall be varied or reversed otherwise than by the Lord Chancellor himself. And this order is to be drawn up and entered with the registrar.

Trotter v. Walmsley.

Brown v. Selby.

Attorney-Gen. v. Gibbs, F. D. C.

{ Baker v. Bayldon, }

{ Same v. Addey, }

Coombes v. Stewart.

{ Attorney-General v. Day, }

{ Same v. Johnson, }

{ F. D. C. }

^c *Tynte, Esq., v. The Queen, (In Error), 7 Q. B. Reports, 216.*

^d See Report of the Wharton Peerage, 12 Cl. & Fin. 295.

Attorney-General v. Curtis.

Peters v. Peters.

{ M'Farlane v. M'Farlane, } F. D. C.

{ Same v. Wishart. } Ditto.

{ Lane v. Hardwick, } Ditto.

{ Same v. Goodyear. } Ditto.

{ Blagrove v. Blagrove, } Ditto.

{ Same v. Same. } Ditto.

Thorpe v. Harvey.

(Signed)

COTTENHAM, C.
LANGDALE, M. R.

Note.—These Causes are transferred to the List of Causes to be heard by the Vice-Chancellor Knight Bruce, by order of the Lord Chancellor.

(Signed)

J. COLLIS, Registrar.

FORMS OF PROCEEDING IN THE SMALL DEBT COURTS.

In the last number, page 415, *ante*, will be found the Rules of Practice in the Small Debt or New County Courts, signed by the judges. The following are the Forms of proceeding as settled and approved by the same judges:—

FORMS.

1. Summons to appear to Plaintiff.

In the County Court of
(Seal)

No. of plaintiff
at

A. B., plaintiff,
against

C. D., defendant.

You are hereby summoned to appear at a county court to be holden at _____ on the _____ day of _____ at the hour of _____ in the forenoon, to answer the above-named plaintiff in an action on contract [or in an action for tort], for [here state the substance of the cause of action]. £ s. d.

Debt or claim .. ..	..	..
Cost of summons and service ..	..	..
Paying money into and out of court; entering satisfaction, &c. ..	..	..
	£	_____

[the particulars of which are hereunto annexed, where the cause of action exceeds 5*l.*]; and take notice, that in case you shall have been personally served with this summons, an application may be made immediately after a judgment has been obtained against you, to commit you to prison, under the provisions of the statute in that behalf made and provided, in which case the judge of the said court will proceed to hear and determine such application, and make such order thereupon as he shall think fit, whether you shall be then present or not.

Given under the seal of the said court, this _____ day of _____ 18 _____

Clerk of the court.

To

the above-named defendant.

N.B.—See notice at back of this summons.

[To be endorsed on the summons.]

Notice.

N.B.—If you admit the whole or any part of the plaintiff's demand, by paying into the office of the clerk of the court at _____ the amount so admitted, together with the costs, five clear days before the day of appearance, you will avoid any further costs, unless in case of part payment, the plaintiff, at the hearing, shall prove a demand against you exceeding the sum so paid into court.

If you have any defence to the demand, by way of set-off, or on account of your being an infant, or married woman, or by reason of the Statute of Limitations, or of your discharge by bankruptcy, or under an act for the relief of insolvent debtors, the same cannot be admitted unless you give notice in writing, and if a set-off, of the particulars of such set-off, to the clerk of the court, at the above-named office, five clear days before the day of hearing.

If the debt or claim exceeds 5*l.*, you may have the case tried by a jury, on giving notice thereof in writing at the said office of the clerk, two clear days at least before the day of trial, and on payment of the fees for summoning, and payable to such jury.

Notice of defence cannot be served unless the fees for entering and serving the same be paid at the time the notices are given.

You may have a summons to compel the attendance of any witness, and the production of any books or documents, on applying at the office of the clerk of the court.

Bring this summons with you when you come to the court or to the office of the clerk.

Office hours from 10 to 4.

2. Summons to a Tenant holding over.

No.

In the County Court of _____ at _____

A. B., plaintiff,
against

C. D., defendant.

You are hereby summoned to appear at a county court to be holden at _____ on the _____ day of _____ at the hour of _____ in the forenoon, to answer to the above-named plaintiff, wherefore you neglect or refuse to quit and deliver up to him possession of a certain (messuage with appurtenances or part of a house, &c., as the case may be) situate at _____ And take notice, if you do not appear at the said court, and show cause why you do not quit and deliver up possession as aforesaid, you may, by order of the court, be turned out of the possession held by you.

Given under the seal of the court, this _____ day of _____ 18 _____

Clerk of the court.

To the above-named defendant.

3. Summons on Devastavit.

No.

In the County Court of _____ at _____

(Seal)

A. B., plaintiff,
against

C. D., executors of E. F., deceased, defendant.

You are hereby summoned to appear at a County Court to be holden at _____ on the _____ day of _____ at the hour of _____ in the forenoon, to answer the above-named plaintiff in an action of contract, for that you, the defendant, have withheld, wasted, and put to your own use, divers goods and chattels which were the property of *E. F.*, deceased, at the time of his death, and which came to the hands of you, the defendant, as executor of the said *E. F.*, to be administered, whereby the judgment recovered against you by the said plaintiff at this court [or at a County Court held at _____ in the county of _____ on the _____ day of _____ [as the case may be] remains unsatisfied.

And take notice—[Conclude, and add notice as in form 1.]

4. Plaintiff's Note on entering Plaintiff.

County Court of _____ at _____
No. _____

£ _____ Fees paid.
The above cause [or causes] will be tried at _____ on _____ at _____ o'clock in the forenoon,
To _____ (Signed)

A. B. } Clerk of the court.
The above-named plaintiff. }
Office at _____

Hours of attendance from 10 to 4.

Take notice, you must take this note along with you when you come to the court, or to the office of the clerk, for any purpose, and in case of loss of it you must immediately give notice thereof at my office.

You may have a summons to compel the attendance of any witnesses, or for the production of any books or documents you may require, on early application at the office of the clerk, and on payment of the expenses thereof.

5. Affidavit of Service of Summons out of the District, or in case of unavoidable absence of Bailiff.

No. _____

In the County Court of _____ at _____
between *A. B.*, plaintiff,
and
C. D., defendant.

E. F. of _____ one of the bailiffs of the County Court of _____ [or of the said court], maketh oath and saith, that he did, on the _____ day of _____ duly serve the said _____ with a summons [or other process], a true copy within the jurisdiction of the said County Court of _____ by delivering the same personally to the said *C. D.* [if the service was not personal, state how served].

Sworn before me, &c. the _____ day of _____
E. F.

Indorse the summons or other process, "this

* NOTE.—Where a plaintiff enters several plaints, one note will be sufficient by specifying the number of the plaints. •

paper marked _____ is the paper referred to in the annexed affidavit."

6. Notice of Payment of the whole Claim.

No. _____

In the County Court of _____ at _____
(Seal.)

Between *A. B.*, plaintiff,
and
C. D., defendant.

I do hereby give you notice, that the above-named defendant has paid into court the sum of _____ being the full amount of your demand in this action, together with the costs incurred by you therein.

Given under the seal of the court, this _____ day of _____ 18 _____

Clerk of the said court.
To the above-named plaintiff.

7. Payment of Part of the Claim into Court.

No. _____

In the County Court of _____ at _____
(Seal.)

Between *A. B.*, plaintiff,
and
C. D., defendant.

Take notice, that the sum of £ _____ has been paid into court by the above-named defendant, together with the sum of £ _____ for costs incurred by you up to the time of such payment; and in case you shall accept the same in full satisfaction of your demand, you must give a written notice to that effect, to the clerk of the court, and a like notice to the said defendant, by serving the same on him personally, or by leaving it at his place of abode or business, three clear days before the day of trial, otherwise you will be liable to pay to the said defendant such costs as he may incur in this action after payment into court as aforesaid.

Given under the seal of the court, this _____ day of _____ 18 _____

Clerk of the court.
To the above-named plaintiff.

8. Notice of Set-off.

No. _____

In the County Court of _____ at _____
(Seal.)

Between *A. B.*, plaintiff,
and
C. D., defendant.

The above-named defendant has given notice, that he will, at the hearing of this cause, claim a set-off against any debt or demand to be proved against him by you, and the particulars of such set-off are annexed hereunto.

Given under the seal of the court, this _____ day of _____ 18 _____

Clerk of the said court.
To the above-named plaintiff.

[Annex to this notice the particulars of set-off as furnished by the defendant, sealed with the seal of the court.]

9. Notice of other Defences.

No.
In the County Court of _____ at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Take notice, that upon the hearing of this cause the defendant intends to give in evidence and rely upon the following ground of defence, in answer to the action.

Dated this _____ day of _____ 18____

Clerk of the said court.

To A. B., the above-named plaintiff.

1. That he, the defendant, was an infant within the age of twenty-one years when the supposed claim arose [or the supposed contract or agreement was made.]

2. That she, the defendant, was, at the time when the supposed claim arose [or of making the supposed contract or agreement,] the wife of _____ of _____

3. That the claim for which he, the defendant, has been summoned, has been barred by the Statute of Limitations.

4. That the defendant is a certificated bankrupt, and obtained his certificate before the commencement of this suit.

5. That the defendant was duly discharged under an Act for the Relief of Insolvent Debtors, on the _____ day of _____ at a court held at _____

10. Summons to Jurors.

No.
In the County Court of _____ at
(Seal.)

You are hereby summoned to appear and serve as a juror in this court, at _____ on the _____ day of _____ at the hour of _____ upon the trial of several cases to be then and there tried by juries, and in default of attendance you will be liable to a penalty of 5*l.* by the statute of 9 & 10 Vict. c. 95.

Given under the seal of the court, this _____ day of _____ 18____

Clerk of the said court.

To _____ of _____

11. Clerk's Notice of Jury.

No.
In the County Court of _____ at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Take notice that the above-named cause will be tried by a jury, the above-named having demanded a jury therein.

Clerk of the court.

To the above-named _____

12. Summons to Witness.

No.
In the County Court of _____ at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

You are hereby required to attend at [the court-house] at _____ on the _____ day of _____ at the hour of _____, to give evidence in the above cause on behalf of the above-named _____ [and then and there to have and produce (state any particular documents required) and all other books, papers, writings, and other documents relating to the said action, which may be in your custody, possession, or power.] In default of your attendance you will be liable to a penalty of 10*l.* under the statute of 9 & 10 Vict. c. 95.

Given under the seal of the court, this _____ day of _____ 18____

Clerk of the said court.

To _____ of _____

13. Order for Payment of Penalty by a Witness.

No.
In the County Court of _____ at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Whereas it has been made to appear to the court that E. F., of _____ was duly summoned to be and appear as a witness in this action, at a County Court at _____ on the _____ day of _____ [and also to produce, as the case may be] and that payment [or a tender of payment] of his reasonable expenses was duly made to him, the said E. F.: And whereas the said E. F. did not appear, &c., on, &c., in obedience to the said summons, [or, having appeared in pursuance of the said summons, did wilfully refuse to be sworn and to give evidence in the said action (or to produce such, &c.)]:

Now the said court doth hereby order that the said E. F. shall pay a fine of £ _____ for such neglect [or refusal] to the clerk of this court, on or before the _____ day of _____ [or forthwith]; and that the sum of £ _____ part of the said fine, shall be paid by the said clerk to the _____ in this action, being the party injured by such neglect [or refusal] of the said E. F.

Given under the seal of the court, this _____ day of _____ 18____

By the court.

Clerk.

14. Order for Costs to Defendant where Plaintiff does not appear.

No.
In the County Court of _____ at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Upon hearing the defendant in this action, and it appearing to the court here, that the plaintiff therein has not appeared at this court on the _____ day of _____ (being the day ap-

pointed for the trial thereof) to prosecute the same against the defendant, it is awarded and ordered by the judge of the said court, that the sum of £ shall be paid by the plaintiff to the defendant forthwith [or on or before the day of], by way of costs and satisfaction for his trouble and attendance in that behalf.

Given under the seal of the court, this day of 18

By the court.
Clerk.

15. Order to adjourn proceedings.

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

It is ordered that the trial of this action be adjourned until Upon [here state the terms or conditions of the adjournment, if any.]

Given under the seal of the court, this day of 18

By the court.
Clerk.

16. Order to suspend Order or Judgment.

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

It is ordered, that an order of this court bearing date [or the judgment herein, or execution herein issued against the goods or person of the defendant] be suspended until [upon payment of costs by ———]

Given under the seal of the court, this day of 18

By the court.
Clerk.

17. Order to rescind a former Order.

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

It is ordered, that a certain order of this court in this action, bearing date the day of be rescinded.

Given under the seal of the court, this day of 18

By the court.
Clerk.

18. Order to stay Proceedings.

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

It is ordered, that all further proceedings in this action be stayed.

Given under the seal of the court, this day of 18

By the court.
Clerk.

19. Orders for a New Trial.

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

It is ordered, that the judgment in this case, and all subsequent proceedings thereon be set aside, and a new trial had between the parties on [set out the terms or conditions, if any, on which the order is made.]

Given under the seal of the court, this day of 18

By the court.
Clerk.

20. Summons to Plaintiff on Interpleader.

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Whereas of hath made a claim to certain goods and chattels [or money, &c., or for certain rent due, &c.], which have been seized and taken in execution under and by virtue of process issuing out of this court, in this action; you are therefore hereby summoned and required to be and appear before the judge of the said court, at on at the hour of in the forenoon, when the said claim will be adjudicated upon, and such order made thereupon as to the judge shall seem fit.

Given under the seal of the court, this day of 18

Clerk of the said court.

To the above-named plaintiff.

NOTE.—The claimant is called upon to give the particulars of his claim, which you may inspect on application at the office of the clerk of the court four days before the day of hearing

21. Interpleader Summons to Claimant.

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

You are hereby summoned and required to appear at a court to be holden on next, at, &c., at the hour, &c., touching a claim made by you to certain goods and chattels, [or monies, &c., or for certain rent due on] seized and taken in execution under process issued out of this court, in this action, and in default of your then establishing such claim,

the said goods and chattels will be sold [or the said monies, &c., paid over] according to the exigency of the said process; and take notice, that you are hereby required, five days before the said day of to deliver to the officer in charge of the said process, or to leave at my office at a particular of the goods or chattels so claimed by you and of the grounds of your claim [or of the amount of rent claimed, and for what period due],

Given under the seal of the court, this day of 18
Clerk of the said court.
To of

22. Order on an Interpleader Summons.

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

It is hereby ordered, touching the claim of E. F. to certain goods and chattels [or monies, &c.] seized and taken in execution in this action, which said E. F. has been duly summoned to support his claim at this court, that the said goods and chattels [or monies, &c., or part thereof, to wit,] [specifying them] are the property of the said E. F. [or of the said defendant, as the case may be]; and it is further ordered, that the costs of this proceeding, amounting to be paid by the said to the clerk of the court, at his office in for the use of the said on or before the day of

Given under the seal of the court, this day of 18
By the court.
Clerk.
Office hours from 10 till 4.

23. Judgment against Defendant for Payment of Debt or Damages.^b

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Upon hearing this cause at a court holden at on the day of it is adjudged, that the said plaintiff do recover against the said defendant the sum of £ for his debt [or damages by him sustained], together with the costs of suit, amounting to the sum of £. And it is ordered that the said defendant do pay the same to the clerk of the court at his office in on or before the day of

Given under the seal of the court, this day of 18
By the court.
Clerk.
Attendance at the office from 10 till 4.

^b This form may be used in replevin where judgment is given for the plaintiff.

24. Judgment against Defendant when the Debt or Damages are made payable by Instalments.

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Upon the hearing of this cause, at a court holden at on the day of it is adjudged, that the said plaintiff do recover against the said defendant the sum of £ for his debt, [or damages by him sustained] in a certain action, together with the costs of suit, amounting to the sum of £ by instalments the first instalment to be paid upon the day of Such payments to be made at the office of the clerk of this court at

Given under the seal of the court, this day of 18
By the court.
Clerk.

Note.—Office hours from 10 till 4.

25. Judgment against Plaintiff for Costs and Satisfaction to Defendant, and for his costs of Suit.

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

At a court holden at on the day of it was adjudged, that judgment should pass against the said plaintiff, and that the said plaintiff should pay the sum of to the said defendant, by way of costs and satisfaction for his trouble and attendance in that behalf, and the further sum of for his costs and charges by the said defendant about his suit in that behalf expended, amounting together to the sum of on or before the day of It is therefore ordered, that the said plaintiff do pay the same to the clerk of the court, at his office at on or before the day of

Given under the seal of the court, this day of 18
By the court.
Clerk.
Office hours from 10 till 4.

26. Execution against the Goods of Defendant.

No.
In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Whereas at a County Court holden at on the day of at within the jurisdiction of the said court, before the judge of the said court, the said plaintiff, by the consideration and judgment of the said court, recovered against the said defendant the

sum of £ for a certain debt before that time due and owing to the said plaintiff [or for certain damages by him sustained, and by the said court awarded to be paid to him the said plaintiff] together with the costs of suit, by the said plaintiff in that behalf expended: And whereas the said defendant, by an order of the said court bearing date the day and year aforesaid, was ordered to pay the said debt [or damages] together with the said costs, amounting together to the sum of [state the time for payment]: And whereas the said sum of [or the sum of being part of the said sum of as the case may be,] has not been paid to the said plaintiff, pursuant to the said order: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said defendant, wheresoever they may be found within the district of this court, (except the wearing-apparel and bedding of the said defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds,) the said sum of £ and also the costs of this execution; and also to seize and take any money or bank-notes, (whether of the Bank of England or of any other bank,) and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, of the said defendant, which may be there found, or such part, or so much thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same.

Given under the seal of the court, this day of 18

By the court.

[In cases of cross-judgments the execution must be stated to be for the balance.]

Clerk of the said court.

To , high bailiff of the said court,
and other the bailiffs thereof.

		s.	d.
Debt			
Costs			
Execution			

Notice.

The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

27. Execution against the Goods of a Testator.

No. In the County Court of at
(Seal.)

Between A. B., plaintiff,
and

C. D., executor of E. F., deceased, defendant.

Whereas at a court duly holden at within the jurisdiction of the said court, on the day of before the judge

of the said court, the said plaintiff, by the consideration and judgment of the said court, recovered against the said defendant, as executor [or administrator] of E. F., deceased, the sum of £ for a certain debt before that time due and owing to the said plaintiff by the said E. F., in his lifetime, together with the sum of £ for his costs of suit, by the said plaintiff, in that behalf expended: And whereas the said defendant, by an order of the said court, bearing date the day and year aforesaid, was ordered to pay the said debt [or damages,] together with the said costs, amounting together to the sum of £ [state the time of payment]: And whereas the sum of £ has not been paid to the said plaintiff, pursuant to the said order: These are therefore to require and order you, forthwith to make and levy by distress and sale of the goods and chattels which were the property of the said E. F. in his lifetime, in the hands of the said defendant to be administered, wheresoever they may be found within the district of this court, the said sum of £, together with the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank,) and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, which were the property of the said E. F. in his lifetime, which may there be found, or such part, or so much thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, if the said defendant hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then that you make and levy of the proper goods and chattels, money, or bank-notes, (whether of the Bank of England or of any other bank,) and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the said defendant, the sum of £ for the costs and charges first above mentioned, and the costs of this execution, and of levying the same.

Given under the seal of the court, this day of 18

By the court.

Clerk of the said court.

To , high bailiff of the said court,
and the other bailiffs thereof.

	£	s.	d.
Debt			
Costs			
Execution			

Notice.

The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

28. Judgment against an Executor on a Devastavit.

No.

In the County Court of _____ at _____
(Seal.)Between A. B., plaintiff,
and

C. D., executor of E. F., deceased, defendant.

Upon the hearing of this cause, at a court holden at _____ on the _____ day of _____ it is adjudged, that the said defendant, being the executor of E. F., deceased, hath made away, wasted, and put to his own use, divers goods and chattels [or monies, &c., as the case may be,] which were the property of E. F. deceased, at the time of his death, and which came to the hands of the said defendant as executor as aforesaid, to be administered, whereby a certain judgment recovered by the said plaintiff against the said defendant as executor as aforesaid, at a court held on the _____ day of _____, remains unsatisfied, and that the said defendant do pay the sum of £ _____ recovered by the said judgment, together with the sum of £ _____ the costs of this suit, to the clerk of the court, at his office, on or before, &c., [as the case may be]; and it is further adjudged, that if the said defendant make default in payment thereof, an execution shall issue to make and levy the said several sums of £ _____ and £ _____ of the goods and chattels of the said E. F., if the said defendant hath so much thereof in his hands to be administered, and if he hath not so much thereof in his hands to be administered, then to be made and levied of the proper goods and chattels of the said defendant.

Given under the seal of the court, this _____ day of _____ 18 _____

By the court.

NOTE.—The execution upon this order may be drawn from this form.

29. Judgment for Defendant in Replevin.

No.

In the County Court of _____ at _____
(Seal.)Between A. B., plaintiff,
and

C. D., defendant.

Upon hearing this action of replevin at a court holden at _____ on the _____ day of _____ it is adjudged that the said plaintiff do return to the said defendant the cattle, [or goods or chattels, as the case may be, stating the particulars thereof,] forthwith [or as the case may be]; and that the said defendant do recover against the said plaintiff the costs of the suit, amounting to the sum of £ _____; and it is further ordered, that the said defendant do pay the same to the clerk of the court, at his office at _____ on or before the _____ day of _____

* Judgment for the plaintiff in Form No. 23.

Given under the seal of the court, this _____ day of _____ 18 _____

By the court.
Clerk.

Office hours, from 10 till 4.

30. Judgment for Recovery of Tenement.

No.

In the County Court of _____ at _____
(Seal.)Between A. B., plaintiff,
and

C. D., defendant.

Upon the hearing of this cause at a court holden at _____ on the _____ day of _____ it is adjudged that the said plaintiff do recover against the said defendant, possession of a certain house [or land or part of a certain house] at _____ together with the costs of suit, amounting to the sum of £ _____ and it is ordered, that the said defendant do forthwith quit and deliver up possession of the said house [or &c.] to the said plaintiff; and that a warrant do forthwith issue, to enforce this adjudication, and to require and authorize the bailiff of the said court to give possession of the said house [or, &c.] to the said plaintiff, within _____ days from the date of such warrant; and it is further ordered, that the said defendant do pay the said sum of £ _____ for the said plaintiff's cost, to the clerk of this court, at his office in _____ on or before the _____ day of _____

Given under the seal of the court, this _____ day of _____ 18 _____

By the court.
Clerk.

Office hours from 10 till 4.

NOTE.—The warrant for the execution of this order may be drawn from this form.

31. Execution against the Goods of Plaintiff.

No.

In the County Court of _____ at _____
(Seal.)Between A. B., plaintiff,
and

C. D., defendant.

Whereas at a county court duly holden at _____ within the jurisdiction of the said court, on the _____ day of _____ before _____ the judge of the said court, the said plaintiff appeared [or did not appear] to prosecute his plaint against the said defendant in an action of debt [or to recover damages] for [set out the substance of the plaint]: And whereas the said plaintiff, at the hearing of the said plaint, did not make proof of his debt [or demand] to the satisfaction of the said court, and thereupon it was ordered and adjudged by the said court, that judgment should be entered for the said defendant, and that the said plaintiff should pay to the said defendant the sum of £ _____ by way of costs and satisfaction for his trouble and attendance in that behalf, and the further sum of £ _____ for his costs and charges, by the said defendant about the said suit, in that behalf expended, amounting together to the

sum of £ on or before the day of

: And whereas the said sum of £ has not been paid to the said defendant, pursuant to the said judgment and order: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said plaintiff, where-soever they may be found within the district of this court, (excepting the wearing-apparel and bedding of the said plaintiff or his family, and the tools and implements of his trade, if any, to the value of five pounds,) the said sum of £ , and also the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said plaintiff, which may there be found, or such part or so much thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same.

Given under the seal of the court, this day of 18

By the court.

Clerk of the said court.

To , high bailiff of the said court, and the other bailiffs thereof.

Costs	£	s.	d.
Execution			

Notice.

The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

32. Summons to Defendant after Judgment.

No.

In the County Court of at
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Whereas at a county court held at, &c., on, &c., the above-named plaintiff obtained a judgment [or order] against you for the payment of for which judgment [or order] still remains unsatisfied, you are therefore hereby summoned to appear at the county court to be holden at, &c., on, &c., at the hour, &c., to be then and there examined by the judge of the said court, touching your estate and effects, and the manner and circumstances under which you contracted the said debt [or incurred the damages or liability] which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectation you then had, and as to the property and means you still have of discharging the said debt [or damages or liability], and as to the

disposal you may have made of any property. And take notice, that if you do not appear in obedience to this summons, you may, by order of this court, be committed to the common goal, [or other prison of the court].

Given under the seal of the court, this day of 18

By the court.

Clerk.

Amount of judgment or order.

Costs of this summons

£	s.	d.

33. Warrant of Commitment in Default of Appearance.

No.

In the County Court of at
Between A. B., plaintiff,
and
C. D., defendant.

To the high bailiff and the other bailiffs of the said court, and all constables and peace officers within the jurisdiction of the said court, and to the governors and keepers of

Whereas at a county court holden at on the day of in the year of our Lord 18 , the above-named plaintiff, by the judgment of the said court, in a certain suit wherein the said court had jurisdiction, recovered against the above-named defendant the sum of £ for his debt [or damages as the case may be.] together with the sum of £ the costs of the said suit. And there-upon it was then and there ordered by the said court, that the said defendant should pay to the said plaintiff the said sums of £ and £ so recovered against the said defendant as aforesaid, on or before the day of, &c. [as the case may be]: And whereas the said defendant not having paid the said sum of £ and £ pursuant to the said order, upon the application of the said plaintiff, a summons was duly issued from and out of the said court against the said defendant, by which said summons, the said defendant was required to appear at the said county court of at on the day of, &c., to answer such questions as might be put to him touching [set out as in the summons]: And whereas it was duly proved upon oath at the said last-mentioned court, that the said defendant was personally served with the said summons: And whereas the said defendant did not attend as required by such summons, or allege any sufficient excuse for not so attending, and thereupon it was ordered by the judge of the said court, that the said defendant should be committed for the term of days, to the in the according to the form of the statute in that case made and provided, or until he should be discharged by the due course of law: These are therefore to require you, the said high bailiffs, bailiffs, and others, to take the said defendant,

and to deliver him to the governor, &c. [or keeper, &c.]; and you, the said governor [or keeper, &c.] are hereby required to receive the said defendant, and him safely to keep in the

for the term of _____ days, from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.

Given under the seal of the court, this day of _____

(Seal.)

Clerk of the said court.

34. *Warrant of Commitment after Examination.*
No.

In the County Court of _____ at _____
Between A. B., plaintiff
and
C. D., defendant.

To the high bailiff and the other bailiffs of the said court, and all constables and peace officers within the jurisdiction of the said court, and to the governor or keeper of

Whereas at a county court duly holden at _____ on the _____ day of _____ in the year _____ of our Lord 18____, the above-named plaintiff by the judgment of the said court, in a certain suit wherein the said court had jurisdiction, recovered against the above-named defendant the sum of £ _____ for his debt [or damages, as the case may be], together with the sum of £ _____ the costs of the said suit, And thereupon it was then and there ordered by the said court, that the said defendant should pay to the said plaintiff the sums of £ _____ and £ _____ so recovered against the said defendant as aforesaid, on or before the day of, &c. [as the case may be]: And whereas the said defendant not having paid the said sums of £ _____ and £ _____ pursuant to the said order, upon the application of the said plaintiff, a summons was duly issued from and out of the said court against the said defendant, by which said summons, the said defendant was required to appear at the said county court of _____ at _____ on the _____ day of, &c., to answer such questions as might be put to him touching [set out as in the summons]: And whereas the defendant having duly appeared at the said court pursuant to the said summons, was examined touching, &c. [as in the summons]: And whereas it appeared upon such examination to the satisfaction of the judge of the said court, that [here insert the particular ground of commitment], and thereupon it was ordered by the said judge, that the said defendant should be committed for the term of _____ days to the _____ in the _____ according to the form of the statute in that case made and provided, or until he should be discharged by due course of law: These are therefore to require you, the said high bailiff, bailiffs, and others, to take the said defendant, and to deliver him to the governor, &c. [or keeper, &c.]; and you the said governor [or keeper, &c.] are hereby required to receive the said defendant, and him safely to keep in the _____ for the term of _____ days,

from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.

Given under the seal of the court, this day of _____ 18____

(Seal.)

Clerk of the said court.

35. *Warrant of Commitment where Defendant appears and is examined at the time of hearing.*
No.

In the County Court of _____ at _____
Between A. B., plaintiff,
and
C. D., Defendant.

To the high bailiff, and the other bailiffs of the said court, and all constables and peace officers within the jurisdiction of the said court, and to the governor or keeper of the gaol at

Whereas at a court holden at _____ on this _____ day of _____ in the year of our Lord 18____, the above-named plaintiff, by the judgment of the said court, in a certain suit wherein the said court had jurisdiction, recovered against the above-named defendant the sum of £ _____ for his debt [or damages], together with the sum of £ _____ the costs of the said suit; and thereupon it was then and there ordered by the said court that the said defendant should forthwith pay to the said plaintiff the said sums of £ _____ and £ _____ so recovered against the said defendant: And whereas the said defendant having personally appeared to the said summons, and being present in court, was, upon the application of the said plaintiff, then and there examined touching [set out as in the summons]: And whereas it appeared upon such examination, to the satisfaction of the judge of the said court, that [here insert the particular ground of commitment]; and thereupon the said judge of the said court, by a certain order bearing date the _____ day of _____ did order and adjudge the said defendant to be committed for the term of _____ days to the _____ in the _____ or until he should be discharged by due course of law: These are therefore to require you, the said high bailiff, bailiffs, and others, to take the said defendant, and to deliver him to the governor, &c., [or keeper, &c.]; and you the said governor [or keeper, &c.] are hereby required to receive the said defendant, and him safely to keep in the _____ &c., for the term of _____ days, from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.

Given under the seal of the court, this day of _____ 18____

(Seal.)

Clerk of the said court.

36. *Certificate for the Discharge of a Defendant from custody.*

In the County Court of _____ at _____
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

I do hereby certify that the above-named defendant, who was committed to your custody under and by virtue of a certain warrant of commitment under my hand and the seal of the said court, and bearing date the _____ day of _____ for the space of _____ days, has, since the issuing of the said warrant of commitment, to wit, on the _____ day of _____ current [or last past,] paid and satisfied the debt [or damages, or the instalments of the said debt or damages,] for the nonpayment whereof he was so committed as aforesaid, together with all fees, costs, and charges due and payable by him in respect thereof; and that the said defendant may in respect of such warrant of com-

mitment be forthwith discharged from and out of your custody.

By leave of the judge of the said court,
_____, Clerk of the said court at
Given under the seal of the said court, this
_____ day of _____ 18 ____
To the governor or keeper of the
gaol at _____

37. Allowance to Witnesses.

	s. d.
Gentlemen, merchants, bankers, and professional men	7 6
Tradesmen, auctioneers, accountants, clerks, and yeomen	5 0
Journeymen, labourers, and the like	2 0
Travelling expenses per mile, one way	0 6

38. Return by the High Bailiff, made the _____ day of _____ 18 ____
In the County Court of _____ at _____

Name of Sub-Bailiff	No. of Execution	No. of Summons	Plain-tiff.	Defend-ant.	Nature of Process.	When issued.	Verdict and Costs ad-judged.	Levied.	When levied.	Received for Bailiff's Charges for Levy.	Ex-penses of Sale.	Paid into Court.	When Paid.	Re-marks.
							£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.		

FRED. POLLOCK,
WM. WIGHTMAN,

C. CRESSWELL,
W. ERLE,
E. V. WILLIAMS.

NEW BILLS IN PARLIAMENT.

IMPROVEMENT OF AGRICULTURAL TENANT-RIGHT.

THIS bill recites, that it is expedient for the better security of farmers in the improvement of land, and for the consequent increase of produce therefrom, as well as of employment for farm labourers, to enlarge and extend the custom of agricultural tenant-right in accordance with the modern advance of husbandry: It is therefore proposed to enact—

1. That every tenant under any holding commencing either before or after the passing of this act, shall, on the determination of his occupancy of any farm, by effluxion of time, notice, death, bankruptcy, or insolvency, be entitled to receive from the incoming tenant on behalf of the landlord, or from the landlord, (subject as after provided,) compensation for any outlay effectually and properly incurred by the said tenant from and after the passing of this act in the temporary improvement of the said farm, by the purchase or preparation of artificial manures, or the purchase of food for cattle, or in the durable improvement thereof by draining, marling, or otherwise amending the soil of the same, or the permanent improve-

ment of the same, by raising or constructing new fences, roads, or suitable and necessary buildings thereon; the said compensation to be estimated as follows; first, by ascertaining the cost of such improvement, then by determining the several terms within which every such kind of amelioration may be expected to reimburse a tenant for such outlay, and distributing the costs equally over such periods respectively, and then ascertaining what is due to the tenant (if anything) by deducting from such terms the time during which the tenant shall have had the benefit of such improvements: Provided always, That the expenses incurred in the ordinary course of good and clean husbandry, or in pursuance of any special contract made before the passing of this act with the landlord, or of which the landlord and tenant shall have agreed to share the expense, shall not be reckoned as improvements for which the tenant is to be compensated under the provisions of this act.

2. That no tenant for a term of years having less than five years to run of his holding, shall be entitled to claim compensation under this act for any work of draining or irrigation, except under any special contract already existing or hereafter to be made, unless he shall furnish beforehand to his landlord a statement

in writing of the plan and estimated cost of such work, and the said landlord shall agree in writing to the said plan; nor shall any tenant whatsoever be entitled to any compensation for any work of building, fencing, or road-making, without such plan and estimate furnished and agreed to as aforesaid, nor for any work of durable improvement whatever executed after he shall have given or received lawful notice to quit, or in the last year of a holding for years: Provided nevertheless, That if any tenant shall have erected any buildings without the consent of the landlord, and on the determination of the tenancy as aforesaid the landlord shall decline to make compensation for them in the same manner as the tenant would have been entitled to be compensated if they had been erected with consent, the tenant shall be at liberty to remove the said buildings at the determination of his tenancy, or within three calendar months from the time, and for that purpose shall have for himself and others a right of entry on the farm; but nothing herein contained shall authorize any tenant to injure or suffer to go to waste any buildings erected on the farm held by him.

3. That no tenant shall be entitled to any compensation in respect of any permanent improvement when the same shall not be in good and sufficient repair or condition at the time of the determination of his tenancy, unless the said valuers shall think fit to allow the same, and then the cost of putting the same in repair shall be taken into account; and any building erected and in respect of which it is intended to claim compensation must have been proved to have been insured from loss by fire in its full value from the time of erection.

4. That any tenant claiming compensation under this act for any outlay, shall, three calendar months before the determination of his tenancy, if the nature of the case shall admit, and if otherwise, immediately after the same, deliver to his landlord the amount and nature of his claim, and an account of all disbursements in respect of such improvements as aforesaid, together with necessary vouchers to support the same; and that if within three calendar months from the delivery of the same the said amount of the said claim shall not be paid, then it shall be referred to valuers to ascertain and determine if any compensation is due to the tenant, and the amount thereof; and the tenant shall appoint one valuer, the landlord another, and the two valuers shall appoint a third, (each valuer to be appointed in writing, and the landlord or tenant to appoint a valuer within fourteen days after he shall have been required by the other party; and the two valuers to appoint the third valuer in writing within seven days after either landlord or tenant shall require them so to do,) and the award in writing of any two of the said valuers shall be binding on all parties; and if either party should refuse to appoint a valuer, or the said valuer should refuse to appoint a third, or if the said valuers, or two of them should, within one calendar month from the appoint-

ment of a third valuer, refuse or omit, or be incapable of making an award, or if by any reason whatever such valuers, or any of them, should not be appointed, then either the landlord or tenant, or the representatives of either, may apply to the Inclosure Commissioners, who shall on such application appoint a person as a valuer, who shall proceed in the said valuation, and whose award in writing shall be binding on all parties, and the costs of such valuation shall be paid as the said valuers shall direct, and any monies directed to be paid to any tenant or his representatives, including any costs, may be recovered by such tenant or his representatives at any time after one calendar month from the date of any such award, by distress as for rent in arrear from time to time on all or any part of the land which he had so occupied, so as no such distress be made after the expiration of two years from the time at which it might first have been made; but no such award shall give any personal or other remedy for the recovery of the sum awarded against the landlord, but the same shall only be a charge on the land to be recovered as aforesaid.

5. That any owner of a farm, either absolutely entitled, or entitled in tail, or for life, or for a term of years whereof not less than twenty shall be unexpired, and whether subject to any rent or otherwise, may, if he shall so think fit, and he is hereby empowered to contract and agree with his tenant beforehand as to the number of years which shall be taken as the full term of compensation under any or each head of claim respectively, and also as to the allowance in money to be made for the same, which agreement shall be binding upon the before-mentioned valuers, and also on the persons for the time being entitled to the farm: Provided nevertheless, That if any such special agreement shall, in the opinion of the valuers, be manifestly contrary to or illusory of the intent of this act, such agreement shall be null and void.

6. That no owner of a farm having a limited interest therein shall consent to such farm being charged in respect of improvements under this act for any term exceeding twenty-two years, nor for the purposes of building with any sum exceeding at any one time one year's rent of the same, except in the case of a farm which in the opinion of the valuers shall, at the time of such outlay for building having been incurred, have consisted mainly of waste and unimproved land.

7. That if any incoming occupier, whether as tenant or otherwise, shall pay to the outgoing occupier the amount of compensation due to the same under this act, the sum so advanced by the said incoming occupier, or any part thereof, shall, in the absence of any special agreement to the contrary, be recoverable under the provisions of this act, as if the said incoming occupier had himself effected the improvements in respect of which such compensation had been paid, due allowance being made in manner hereinbefore provided for the

period during which such incoming occupier shall have had the benefit of such improvements.

8. Act not to affect existing rights unless as specially provided.

FURTHER REDUCTION OF FEES IN CHANCERY.

3rd March, 1847.

THE Right Honourable Charles Christopher Cottenham, Lord High Chancellor of Great Britain, by and with the advice and concurrence of the Right Honourable Henry Lord Langdale, Master of the Rolls, and the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England, Doth hereby, in pursuance of an Act of Parliament passed in the third and fourth years of the reign of his late Majesty, King William the Fourth, intituled, An Act for the regulation of the proceedings and practice of certain offices of the High Court of Chancery in England, and in pursuance and execution of all other powers, enabling him in that behalf, order and direct in manner following, that is to say:

1. That the Master of Reports and Entries of the High Court of Chancery, and the clerks of reports, shall in lieu and instead of the fees of 2s. for the first side, and 1s. 6d. for every other side, containing two folios of ninety words, now receivable by them for all copies of orders, exceptions, petitions, reports or other documents, receive and take for all such copies bespoke after the 4th day of March instant, 4d. for every folio of ninety words, and no more.

2. That this order be entered in the Registrar of the High Court of Chancery.

COTTENHAM, C.

LANGDALE, M. R.

LANCELOT SHADWELL, V.C.E.

BARRISTERS CALLED.

Hilary Term, 1847.

LINCOLN'S INN.

28th January.

John George Forbes, Esq.
Joseph Bateman, Esq., LL. D.
Edward Allfrey, Esq.
Lindsay B. Lawford, Esq.
The Hon. George F. S. Elliot.
John K. Fitzherbert, Esq.
Patrick M. Leonard, Esq.

INNER TEMPLE.

29th January.

Frederick William Meymott, Esq.
Richard R. Rothwell, Esq.
John Thompson, Esq.
Frederic Philip Hinde, Esq.
Henry Pelly Maude, Esq.
Joseph Hardcastle, Esq.

John Edward Wallis, Esq.
Frederick E. Marshall, Esq.
John Townend, Esq.
Charles Edward Pollock, Esq.
William Swinborne Chalk, Esq.
Ralph Ludlow Lopes, Esq.
Edward Owen Hornby, Esq.
Henry Corpe Caulfield, Esq.
James B. R. Bulwer, Esq.
Clayton William F. Glyn, Esq.
John Barff Charlesworth, Esq.
Theodore Howard Galton, Esq.
William Mills, Esq.
Thomas Leslie, Esq.
John Blosset Maule, Esq.

MIDDLE TEMPLE.

15th January.

Thomas Edward Clarke, Esq.
Anthony Austen, Esq.
John Whitbread, Esq.
Richard Whitehouse, Esq.

29th January.

Thomas Sier, Esq.
Thomas Smith Badger, Esq.
John William Badger, Esq.
Charles Cecil de Trafford, Esq.
Boddam Castle, Esq.
David Burton, Esq.
William John Bovill, Esq.
William Henry Stewart, Esq.
Christopher William Richmond, Esq.
John James Colman, Esq.
Charles William Dare, Esq.
Patrick Stewart, Esq.
John Smith, Esq.
John Henry Proctor Leresche, Esq.
Albert Jenkin, Esq.
Morgan Lloyd, Esq.
Thomas Oldfield, Esq.
Charles Owen Snow, Esq.

GRAY'S INN.

31st January.

Samuel Simpson Toulmin, Esq.

27th January.

John Worsly, Esq.
Samuel Rolls Ewen, Esq.

PRACTICE AT THE MASTERS' OFFICES IN CHANCERY.

PUNCTUAL ATTENDANCE OF WARRANTS.

It is well known that, in general, a quarter of an hour's grace is allowed in attending warrants before the Master, and that an *ex parte* proceeding does not usually take place until the quarter of an hour has expired.

We learn that Master Lynch has given notice in his office, that he will proceed punctually at the hour notified in the warrant. This

should be generally known, in order that solicitors may prevent any advantage from being taken of their absence.

We understand that no change has taken place in the other Masters' offices; and we would suggest that the practice should be uniform one way or other, else mistakes will be made, and inconvenience suffered.

ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

Courts of Common Law.

EVIDENCE.

AFFIDAVITS.

ON motion to make a rule absolute, an affidavit of service sworn before a British consul abroad is sufficient, although it appear that according to the law of the foreign country, an affidavit cannot be taken by any of the authorities there. *Williams v. Welch*, 3 D. & L. 357.

Cases cited in the judgment: *Le Vaux v. Berkeley*, 2 D. & L. 51; 5 Q. B. 836; *Ex parte Hutchinson*, 4 Bing. 606; 1 M. & P. 559; *In re Pickersgill*, 6 M. & G. 250.

AGREEMENT.

See *Stamp*.

APOTHECARY'S CHARGES.

Debt for goods sold and delivered, work done, and materials provided, and on an account stated. The particulars of demand consisted of items for "medicines and attendances." At the trial the plaintiff's assistant proved that they were surgeons, and that he had visited and dispensed medicines to the defendant, and that on one occasion he had bled the defendant: *Held*, that *prima facie* the charges were charges in a medical case; and that the plaintiffs were therefore bound to prove that they were certificated as apothecaries, or that they had been in practice previous to the 1st of August, 1815. *Proud v. Mayall*, 3 D. & L. 531.

ATTORNEY.

Mala praxis.—*Champerty*.—The plaintiff's attorney having given evidence on his behalf, and it being afterwards discovered that his client had previously assigned to him all his interest in the event of the suit, the court set aside a verdict found for the plaintiff, without entering into the consideration of the probable effect of the evidence so given upon the minds of the jury. *Wade v. Simeon*, 2 C. B. 342.

BILL OF EXCHANGE.

Proof of protest, and notice to charge the drawer.—*Conditional promise*.—*Held*, that any acknowledgment by the drawer of a bill of his liability to pay, or any promise to pay the amount, though conditional as to the mode of payment, is evidence to be left to the jury, of *Put* notice of dishonour, and, in the case of a

foreign bill, of its having been duly protested. *Campbell v. Webster*, 2 C. B. 253.

Cases cited in the judgment: *Patterson v. Becher*, 6 J. B. Moore, 319; *Wilkins v. Jadis*, 1 M. & Rob. 41.

CHARTER PARTY.

See *Usage of Trade*.

COMMISSION TO EXAMINE WITNESSES.

In an information by the Attorney-General, under the Customs' Act, the court has no power to direct a commission for the examination of a witness abroad on behalf of the defendant; nor will the court postpone the trial for the purpose of compelling the crown to consent to such commission. *Attorney-General v. Bovet*, 3 D. & L. 492, S. C. 15 M. & W. 60.

Cases cited in the judgment: *Calliand v. Vaughan*, 1 B. & P. 210; *Attorney-General v. Wood*, 7 M. & W. 571; 9 Dowl. 310; *Mostyn v. Fabrigas*, 1 Cowp. 174; *Laragoity v. Attorney-General*, 2 Price, 172.

COMMISSIONER'S AUTHORITY.

Acknowledgment.—*Affidavit sworn before commissioner*.—The court refused to allow an affidavit and notarial certificate of an acknowledgment to be filed, under the 3 & 4 W. 4, c. 74, s. 85; the affidavit purporting to be sworn before one "G., a commissioner for taking affidavits in the court of Q. B., Canada West," and the notary certifying him to be a commissioner of that court, and, as such, qualified to administer oaths. *Street, in re*, 2 C. B. 364.

COMPETENCY OF WITNESS.

1. In an action against one of two part-owners upon a charter-party made by him alone: *Held*, that another part-owner who was no party to the action, and did not authorize the defence, was a competent witness for the defendant. *Askinson v. Cooper*, 1 C. B. 712.

2. In trover by A. against B. for two promissory notes, B. pleaded, that before A. was possessed of the notes, one C. was lawfully possessed thereof, as of his own property; that they had been fraudulently obtained from C., and wrongfully delivered to A., whereupon B., as the agent of C., and by his direction and authority, took the notes out of the possession of A. The replication traversed the property in C.

To support the affirmative of this issue, C. was called as a witness. He stated, on the *voir dire*, that he had not indemnified B. and that he had nothing to do with the action.

Held, that he was an admissible witness, under the 3 & 4 W. 4, c. 42, s. 26, and the 6 & 7 Vict. c. 85.

And *semble*, that he was competent at common law. *Hearne v. Turner*, 2 C. B. 535.

Case cited in the judgment: *Grylls v. Davies*, 2 B. & Ad. 514.

CONSUL'S SIGNATURE.

Feme covert.—*Acknowledgment of deed*.—*Affidavit of verification under 3 & 4 W. 4, c. 74*.—The court allowed an acknowledgment to be received and filed under 3 & 4 W. 4, c. 74,

s. 85, where the affidavit verifying the same was sworn before "The Provisional British Consul for the Society Islands," it appearing that there was no notary or any other official person before whom it could have been sworn within many hundred miles. *Darling, in re*, 2 C. B. 347.

Case cited in the judgment: *Pickersgill, in re*, 6 M. & G. 250; 6 Scott, N. R. 831.

CONTRACT, WRITTEN.

See *Usage of Trade*.

CROSS-EXAMINATION.

Informers.—In an information by the Attorney-General for a breach of the Revenue Laws, a witness for the Crown cannot be asked in cross-examination—"Did you give the information?"

For the rule of public policy which protects a witness from being asked such questions as would disclose the informer if he be a third person, equally applies to questions which would disclose whether the witness is himself the informer. *Attorney-General v. Briant*, 15 M. & W. 169.

Cases cited in the judgment: *Hardy's case*, 24 St. Tr. 816; *Watson's case*, 32 St. Tr. 98; *Reg. v. Ryle*, 9 M. & W. 2271.

FRAUDS, STATUTE OF.

Acceptance of goods.—*A.*, being himself yearly tenant of a house to *B.*, underlet the house and furniture at a weekly rent to *C.* *A.* being desirous of getting rid of his tenancy at the end of the current year, offered to sell the furniture to *C.* for 50*l.*, which *C.* thought too much, but verbally agreed to have it valued, and to pay so much as it should be found worth, on *B.*'s agreeing to accept him as his tenant instead of *A.* The furniture was valued at 80*l.*, which *C.* refused to give, but then offered the 50*l.* Before the expiration of the year an agent of *A.* took the key out of the door and gave it to *C.*, telling him that he must settle with *A.* himself about the furniture. *B.* refused to accept *C.* as his tenant, and he continued to occupy the house and use the furniture as before, but continually giving notice to *A.* to take away the furniture, which he refused to do; and after the lapse of three months, *C.* sent it to a broker's: *Held*, that, upon these facts, there was no evidence to go to the jury of an acceptance by *C.* of the furniture, under a contract of sale, to satisfy the Statute of Frauds. *Lillywhite v. Devereux*, 15 M. & W. 285.

Case cited in the judgment: *Edan v. Dudfield*, 1 Q. B. 302; 4 P. & D. 656.

LAND, INTEREST IN.

Account stated.—*Held*, that an agreement respecting the transfer of an interest in lands required by the Statute of Frauds to be in writing and signed, cannot be enforced by an action upon the agreement against the transferee for the stipulated consideration, notwithstanding that the transfer has been effected, and nothing remains to be done but to pay the considera-

tion: but that when, after the transfer, the transferee admits to the transferor that he owes him the stipulated price, the amount may be recovered in a count upon an account stated. *Cocking v. Ward*, 1 C. B. 858.

LIBEL.

In an action for a libel published in a newspaper, evidence that copies of the newspaper containing the libel have been gratuitously circulated in the plaintiff's neighbourhood, though they be not shown to have been sent by the defendant, the publisher, is admissible to show the extent of the circulation of the paper and the consequent injury to the plaintiff.

It was sought to prove that one of such newspapers had been sent to a public reading-room in the plaintiff's parish, to which there were eighty subscribers. The president of the reading-room stated, that a newspaper called the "Nonconformist," (which was the name of that published by the defendant,) was gratuitously sent to the room; that, from the glance he had of it, he judged it contained the libel in question; that it remained there a fortnight, when it was taken away, as he supposed, and not returned; that he had searched the room for it, and believed it was lost.

Held, 1st, that this was sufficient evidence to show that the newspaper sent to the reading-room was one of the copies of the defendant's newspaper containing the libel; 2ndly, that this was sufficient proof of its loss to make secondary evidence of its contents admissible. *Gathercole v. Miall*, 15 M. & W. 819.

And see *Newspaper Proprietorship*.

NEWSPAPER PROPRIETORSHIP.

Declaration at Stamp Office.—The fact of *A.*'s name appearing as proprietor of a newspaper in the declaration filed at the Stamp Office, pursuant to the 6 & 7 W. 4, c. 76, ss. 6, 8, does not render *A.* liable in respect of a contract specifically entered into with *B.*, the real proprietor of the newspaper, after *A.* has ceased to be interested therein. *Holcroft v. Hoggins*, 2 C. B. 488.

STAMP.

Agreement.—A joint-stock company, of which the plaintiff and defendant were both directors, occupied a house belonging to the plaintiff. A draft agreement, prepared by the plaintiff's attorney, was submitted to the solicitors of the company, and by them approved and returned; and, at a subsequent meeting of the directors, a resolution was made empowering the solicitors to sign the agreement on behalf of the company. The agreement, however, was never executed. In debt for use and occupation, the plaintiff offered the draft in evidence, not as an agreement binding *per se*, (it being neither dated, stamped, nor signed,) but for the purpose of showing that the occupation of the premises was to be by the other directors, *exclusive of himself*: *Held*, that the draft was inadmissible, for want of a stamp, inasmuch as it could only be relied on as a proof of the special agreement, the plaintiff's position pre-

cluding him from maintaining an action against a co-heir upon an implied contract. *Chadwick v. Clarke*, 1 C. B. 700.

Case cited in the judgment: *Holmes v. Higgins*, 1 B. & C. 74; 2 Dowl. & R. 196.

USAGE OF TRADE.

Evidence when admissible to explain a written contract.—By a charter-party, *A.*, the owner, agreed that the ship should proceed to the Tyne, and then load a cargo of coals, and proceed to Algiers, and deliver the same there, on payment of certain freight. *B.*, the charterer, engaged that the vessel should be unloaded at a certain average rate per day; and that, if detained a longer period, he would "pay for such detention at the rate of 5*l.* per diem, to reckon from the time of the vessel being ready to unload, and *in turn to deliver.*" According to the general regulations of the port of Algiers, vessels may commence unloading as soon as they enter within the mole; but, by a special regulation of the French government, coals destined for the use of the marine department are required to be unladen at a particular spot, and in a given order: *Held*, that evidence was admissible to show that the words "in turn to deliver," had by the usage of the particular trade acquired a known meaning in reference to this special regulation with respect to coals for the use of the French marine department, although *A.* was not cognizant of the fact of the coals having been shipped under a contract with the French government; but that the testimony of three or four witnesses, speaking to a course of business that had only grown up within about five years, and with reference to charter-parties, the language of which was not identical with that of the charter-party in question, was insufficient to establish such general usage.

Held, also, that the special regulation as to the unloading of coals for the French marine department, was to be considered one of the regulations of the port, binding upon all vessels entering the port. *Robertson v. Jackson*, 2 C. B. 412.

WITNESS.

Liability for not attending in obedience to a subpoena.—Inadmissibility of proof on the part of the defendant, of a fact at variance with an admission by the defendant, on the record, although appearing upon the face of another record produced by the plaintiff for a collateral purpose.

A declaration in case, by *A.* against *B.*, for not attending the trial of a cause between *A.* and *C.*, in obedience to a subpoena, alleged that *A.* had a good cause of action against *C.*, and that the testimony of *B.* was material for evidence for *A.* on that trial; and that, in consequence of such non-attendance, *A.* was compelled to withdraw the record, and became liable to pay the then defendant the costs of the day, and also incurred costs in preparing for trial. *B.* pleaded—not guilty—leave and licence—and that *A.* might have proceeded to the trial without his testimony.

Held, that *B.* having admitted, by his course

of pleading, that *A.* had a good cause of action against *C.*, it was not competent to *B.* to avail himself of the record in that suit, (which were put in by *A.* for the purpose of showing that such a record existed and had been withdrawn,) to show that the declaration therein was so defective, that a verdict thereon would have been fruitless. *Needham v. Fraser*, 1 C. B. 815.

And see *Commission; Competency.*

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL

Lord Chancellor.

Lewis v. Cooper. Jan. 11th, 1847.

PLAINTIFF'S RIGHT TO DISMISS HIS BILL.

A plaintiff cannot obtain an order of course to dismiss his bill as against a defendant pending an appeal by the latter.

Mr. *J. Parker* stated that the Vice-Chancellor of England having overruled a demurrer to the bill by the defendant, the latter had petitioned the Lord Chancellor for a rehearing. The plaintiff subsequently obtained at the Rolls the common order to dismiss his bill as against this defendant for want of prosecution on payment of the costs, which order was afterwards discharged by the Master of the Rolls, principally upon the fact that the demurrer had not been mentioned in the petition upon which the order had been obtained.*

Mr. *Parker* argued that the plaintiff could at any time dismiss his own bill, and that he could not be deprived of this right by the *ex parte* inchoate proceeding of a defendant's petition of rehearing. There is no authority to show that the plaintiff's right is open to the exception that an order had been obtained against which the defendant had appealed. The learned counsel cited *Carrington v. Holly*, 1 Dick. 280; *Curtis v. Lloyd*, 4 Myl. & Cr. 194; and *Dearman v. Wych*, *ibid.* 550.

Mr. *Rolt* and Mr. *Terrell*, on the other side, remarked, that the judgment of the Master of the Rolls proceeded upon the grounds that a material fact had been suppressed in the plaintiff's petition. *Cartwright v. Smith*, 6 Beav. 121. The order of dismissal is made upon the plaintiff's paying the costs of the suit, but such costs would not include those of the demurrer.

Mr. *Parker* in reply submitted, that it was not material in a petition of course to state more than the filing of the bill and answer.

The Lord Chancellor said, he was informed by the registrar, (Mr. Colville, sen.,) that these orders of course ought not to be granted when any proceedings in the suit had taken place. But the order was wrong in substance. The defendant had obtained a right against the plaintiff, of which he would be deprived if the latter could dismiss his bill as of course. If

* The proceedings at the Rolls are fully reported, *ante*, p. 283.

the demurrer were overruled, the defendant had a right of appeal;—if allowed, then there was a decision in his favour in respect of the plaintiff's claims against him—both important advantages. The plaintiff would also save the costs of the demurrer if he could thus dismiss his bill in the present stage. The motion must be therefore refused with costs.

Rolls Court.

Freeman v. Gray. Jan. 28, and Feb. 8.

AMENDMENT OF BILL.—DELAY.—COSTS.

One order to amend may be obtained as of course, so long as the answer of any defendant to the bill remains outstanding, notwithstanding the service of a notice to dismiss, and great delay in getting in the answer of that defendant. Therefore, a motion to discharge such an order for irregularity was refused, but without costs.

THIS was a motion to discharge an order to amend for irregularity, on account of the great delay of which the plaintiff had been guilty in getting in the answer of a formal defendant. It appeared that the bill was filed on the 23rd July, 1845, and the last answer of the real defendant was put in on the 16th of Dec. 1845. But no further step was taken in the cause, except a motion for the production of documents, until the 21st of Dec. 1846, after the plaintiff had been served with a notice of a motion to dismiss. On this day however, the plaintiff obtained and served an order of course to amend.

Mr. *Elderton*, for the motion, urged that such a proceeding was entirely contrary to the spirit of the orders; and that the order ought to be discharged, unless the plaintiff could show such reasons for the delay in getting in the answer of the defendant who had not answered, as would be sufficient to meet a motion to dismiss, if no order to amend had been obtained. To allow a plaintiff to obtain an order as of course to amend because all the defendants had not answered, where he could not show such a case, would enable him to commit a fraud upon the orders of the court. He referred to *Stinton v. Taylor*, 4 Hare, 608; *Dalton v. Hayter*, 7 Beav. 586.

Mr. *Heathfield*, contra, relied upon the right of the plaintiff under the orders to amend his bill once as of course at any time whilst an answer remained outstanding—a right which each defendant could always prevent him from exercising in any improper manner, by moving on his own answer to dismiss the bill, according to his lordship's decision in *Dalton v. Hayter*. To show that the present order was regular, he referred to *Peacock v. Sievier*, 5 Sim. 553, contending that the new orders did not alter the old practice in this respect.

Some question arose as to the cause of the delay, and the motion stood over for the purpose of allowing an explanation to be given of the circumstances of the case. An affidavit was made accordingly, but no satisfactory explanation was given by it.

Lord *Langdale* said the delay was so gross and so wholly without excuse, that he was sorry he could not make the order asked for. No doubt the conduct of the plaintiff was a gross abuse of the liberty of amendment given by the orders of the court. Here was a whole year during which nothing was done. There had been no pretence shown for the delay; but as there was a defendant who had not answered, he could not say that the order was irregular, therefore he must refuse the motion, but it should be without costs.

Vice-Chancellor of England.

Johnson v. Tucker. Feb. 2nd, 1847.

PRODUCTION OF DOCUMENTS.—PARTIES.—CONSTRUCTION OF ORDER 23 OF AUGUST, 1841.

In a suit by some of several cestui que trusts for an account and conveyance to a new trustee, it is sufficient to serve the other cestui que trusts with a copy of the bill, and a motion for production will not be refused on the ground of their not being substantial parties.

THIS was a motion for production of documents admitted by the answer of the defendants to be in their possession, and it was resisted on the ground that certain necessary parties were not before the court. The bill was filed by some of several *cestui que trusts* against the representatives of deceased trustees for an account, and against the heir of the surviving trustee for a conveyance of the trust property, the remaining *cestui que trusts* having been served with a copy of the bill, and the plaintiffs praying that the parties so served might be bound by the proceedings in the suit.

Mr. *James Parker* and Mr. *Glasse*, in support of the motion, cited *Davis v. Davis*, 4 Hare, 389; *Lloyd v. Lloyd*, 1 Yo. & Col. C. C. 181.

Mr. *Stuart* and Mr. *Rogers*, contra, urged, that the interests of all the trustees were so materially concerned in the objects of the suit, that the case was not within the 23rd Order.

The *Vice-Chancellor* said, that where a party was to receive a benefit from a suit it could not be said that any direct relief was sought against him, and his Honour thought this was a case falling within the 23rd Order, the true meaning of which was, that it should be applicable to such a case as the present, because no account, payment, conveyance, or other direct relief was sought. All that was asked was a conveyance from the heir of the surviving trustee, and that the other parties might account. It appeared, also, that the remaining *cestui que trusts* had been served with a copy of the bill so that they might intervene if they pleased.

Order made.

Vice-Chancellor Knight Bruce.

Woodward v. Miller. Michaelmas Term, 1846.

COSTS.—OBJECTION TO TITLE.—VENDOR AND PURCHASER.

A defence to a bill for the specific perform-

ance of a contract for the sale of a leasehold estate, (upon an allegation that the vendor had employed puffers at the sale,) having failed, and a reference being made to the master to inquire as to the title, the defendant (the purchaser) objected to the title upon the ground that fulfilment of a covenant to insure had not been proved, nor any waiver shown, supposing a breach had been committed. A waiver being produced, and the Master having reported in favour of the title shown in February, 1846, the cause having been heard in November, 1845, Held, that all costs subsequent to the decree for reference ought to be paid by the defendant.

Upon the hearing, in Michaelmas Term, 1845, the defendant resisted the specific performance of a contract for the sale to him of a leasehold estate, alleging by his answer that the sale by auction had been unfair, the vendor having employed puffers. The court decided against the defendant, and decreed a reference to the Master, as to the title, and as to the time when it was first shown that a good title could be made, further directions and costs being reserved. The property in question, it appeared, had been demised, in June, 1839, by two persons, Jolly and Marshall, for 70 years, to one Hiscock, who covenanted to insure in the Atlas office. The indenture of demise contained a clause of forfeiture, in the event of a breach of the covenant to insure. The defendant, before the Master, objected to the title, alleging the want of proof that the covenant had been performed, or of a waiver of the forfeiture. The vendor, however, produced a waiver, and in February, 1846, they produced a deed of release, (dated in November, 1839,) from Jolly to Marshall of the interest of the former. The Master, by his report, stated that a good title had first been shown in February, 1846, when the abstract of the deed of Nov., 1839, had been sent to the defendant. Upon further directions,

Mr. Wigram and Mr. De Gex submitted, that the plaintiff was entitled to all the costs, and cited *Scoones v. Morrell*, 1 Beav. 251; *Taylor v. Brown*, 2 Beav. 180; 9 Law J. Rep. N. S., 14; *Hyde v. Dallaway*, 4 Beav. 606.

Mr. Bacon contended, that as a good title had only been shown in February, 1846, three months after the hearing, the defendant was entitled to costs since the hearing, up to which time the plaintiff ought not to be allowed any.

Sir J. L. Knight Bruce, V. C. I am of opinion that the circumstances of this case are such as not to permit me to allow the costs on either side up to the first decree; and as to those subsequent costs, although the plaintiff's title was not shown until the parties were in the Master's office, it is my opinion that the defendant not appealing, nor intending to appeal, against that decree, all litigation ought to have ended at once, and he ought to have accepted the title as shown in the Master's office, without the expense of attending there. I therefore

think that the costs of the suit, after the decree and down to the present time, must be paid by the defendant. Up to the time of the first decree, there will be no costs on either side. All subsequent costs, if any, I reserve.

Queen's Bench.

(Before the Four Judges.)

Andrews v. Lord Lyndhurst. Sittings in Banc after Hilary Term, 1847.

DEBT FOR PENALTY.—PLEADING.

In an action of debt to recover a penalty, under the 31 E. 2, c. 2, s. 10, against a judge for refusing to grant a writ of habeas corpus, it should appear affirmatively in the declaration that the plaintiff was in custody on a criminal or supposed criminal charge, and it should appear negatively that he was not in custody either on any charge of felony or treason, or in execution by legal process.

THIS was an action of debt under the 10th section of the 31 Car. 2, c. 2, brought to recover a penalty of 500*l.* against the late Lord Chancellor, for refusing to grant a writ of *habeas corpus*. The declaration alleged in general terms, that the plaintiff applied to the defendant for a writ of *habeas corpus*, which he refused to grant. To this declaration there was a general demurrer, on the ground that the plaintiff did not in his declaration show that he was in a situation which entitled him to the writ of *habeas corpus*.

Mr. Cowling, for the defendant. The preamble and the second section of the 31 Car. 2, c. 2, relates to a commitment on a criminal or supposed criminal charge. The third section also mentions persons committed "for any crime," unless for felony or treason, plainly expressed on the warrant of commitment, and excepts persons committed in execution or by legal process. The same section also requires the application to be made in writing and attested by two witnesses. The statute therefore only applies to persons in custody on a criminal or supposed criminal charge, and the plaintiff does not show in his declaration that he has any right to demand the *habeas corpus*, because the application is not properly made, and for anything that appears on the declaration he may have been in custody on a charge of felony or treason, or he may have been committed to prison in execution on civil process.—*Wilmot's notes*, 77; *Hobhouse's case*.^a

The defendant appeared to argue his own case, and contended, that he had been misled by reason of the points of demurrer in the margin, referring to a clause in the statute which his copy of the statute did not indicate.

The court allowed him a week to correct the error and prepare his argument.

On a subsequent term the defendant insisted on the same objection, and declined proceeding

with his argument as applicable to the clauses of the statute.

Lord Denman, C. J. It is perfectly clear by the argument last week, that the plaintiff was put in possession of all the clauses in the act of parliament on which the counsel for the defendant relied in support of the demurrer, and therefore he ought to have come prepared to argue upon them. The argument on behalf of the defendant was, that the plaintiff had not brought himself within the terms of the act of parliament. It was not shown that he was in custody on any criminal or supposed criminal charge, nor has he negatived that he was in custody for felony or treason. The plaintiff ought clearly to bring himself within the clauses of the act, and having failed to do so, I think for these reasons that the declaration is insufficient.

Mr. Justice Patteson. The plaintiff must have known the sections on which the argument for the defendant proceeded. There are no numbers on the parliament roll, so that the mistake as to the number of the clauses is wholly immaterial. If the plaintiff will not argue, we must consider the case and decide for ourselves. The action is brought under the 10th section for a penalty, by reason of the defendant having refused a writ of *habeas corpus*, but it does not appear that the plaintiff has applied in a proper manner, and it is perfectly consistent with this declaration, that he was in custody on a writ of *ca. sa.* or any other civil proceedings.

Coleridge and Wightman, J.'s, concurred.

Judgment for the defendant.

Ex parte Thomas. Hilary Term, 1847.

MANDAMUS.—CONVICTION.

When magistrates convicted a person under an act of parliament which was repealed, and they afterward convicted him for the same offence under a subsequent act, but refused to enforce the penalty, the court in the exercise of its discretion refused to grant a mandamus to the magistrate to enforce the penalty.

THOMAS was convicted by two justices for the county of Merionethshire for killing salmon, under the 58 Geo. 3, c. 43, s. 6, and committed to prison for two months. The penalty given by the 58 Geo. 3, c. 43, s. 6, is repealed by the 6 & 7 Vict. c. 33, s. 6, and Thomas was taken before Mr. Justice Williams, at Bala, during the last spring assizes, and discharged after he had been a few days in prison. He was afterwards taken before two magistrates of the same county and convicted under the 6 & 7 Vict. c. 22, on the same facts which were proved against him on the former occasion, but the magistrates refused to enforce the penalty, it being contended on behalf of the prisoner, that the magistrates would be liable to a heavy penalty under the 6th section of the Habeas Corpus Act, 31 Car. 2, c. 2, if they re-committed him for the same offence. Application was made to

the magistrates in November last to enforce the penalty, which they refused to do.

Mr. Pashley now moved for a rule to show cause, why a mandamus should not issue, commanding the magistrates either to enforce the penalty by distress or commit him to prison. He contended, that the first offence was not any offence, because, at the time of the conviction, the statute of Geo. 3, was repealed. That there is no other mode of enforcing the conviction, and that this is a mere ministerial act, the same as making the appointment of overseers or issuing a distress warrant to enforce a poor-rate.

Lord Denman, C. J. I do not remember any case where this court has granted a mandamus to enforce a conviction. This is different from levying a poor rate, or the appointment of overseers, because those are things requisite to be done in order that the business of the parish may be carried on. I think this is a matter in which we can exercise a discretion, and if we can, I think this rule ought not to be granted.

Coleridge and Wightman, J.'s, concurred.^b

Rule refused.

Common Pleas.

Town v. Campbell. Hilary Term, 1847.

LANDLORD AND TENANT.—CONSTRUCTIVE TENANCY.—NOTICE TO QUIT.

A furnished house, it appeared, had been taken by the defendant for three lunar months, ending the 1st of August, 1846, and the plaintiff's receipt for the rent due for that period, dated the 10th of August, was inclosed to the defendant in a letter stating the plaintiff's conclusion that the defendant would continue to hold the house as before. On the 24th of August, however, the defendant required the plaintiff to take charge of the house, and on the 3rd of Sept. offered to give up the keys to him and pay the rent due; to which, on the 5th Sept., the plaintiff, in reply, expressed his readiness to receive the keys, but said he would consider the defendant as responsible for the rent until "the expiration of his time." Held, that this was evidence from which to infer a weekly tenancy, and that a sufficient notice to quit had been given by the defendant.

Semble, that a notice to quit was not in such a case requisite.

THIS was an action for the use and occupation of a furnished house. The defendant pleaded that he never was indebted beyond six weeks' rent, which he had tendered and paid into court. At the trial before Colman, J., during the sittings in the present term at Westminster, it was proved that the house in question had been taken by the defendant from the 7th of May, 1846, to the following 1st of August, a period of three lunar months, for 120

^b *Patteson, J., was absent.*

guineas, and the plaintiff's receipt for that sum, stating it to be for rent from the 7th of May to the 1st of August, and dated the 10th of the latter month, was produced, but there was no evidence as to the exact day on which the rent was actually paid. The receipt, it appeared, had been enclosed to the defendant in a letter from the plaintiff, which, amongst other things, stated, that in the absence of any intimation that the defendant wished to continue in the house for any longer period, he (the plaintiff) concluded that the defendant had taken it as before. On the 24th of the same month, August, the defendant's wife, in the absence of her husband, wrote to the plaintiff requesting him to lose no time in sending some one to take charge of the house in question, as it was inconvenient to keep servants there at night. To this the plaintiff made no reply; and on the 3rd of Sept., a house agent, at the request of the defendant, wrote to the plaintiff saying that he was ready to deliver up the keys of the house and pay the rent due. In answer to this, the plaintiff, by a letter dated the 5th of Sept., expressed his readiness to receive the keys of the house on the understanding that the defendant was to remain responsible for the rent until the expiration of his time, unless another tenant could be procured. On these facts, and under the direction of the learned judge, the jury treated the tenancy as a weekly one, and as having been put an end to by a notice to quit, and found their verdict for the defendant on the general issue, to set aside which and obtain a new trial,

Lush now moved for a rule *nisi* on the grounds of misdirection and the verdict being against the evidence. He submitted, first, that the tenancy of the defendant, after the 1st of August, was to be considered a certain one for a similar period as the original taking, and not merely a weekly tenancy. Secondly, if no more than a weekly tenancy, then no notice to quit had been proved, and until then, at least, the defendant remained liable.

By the Court. The jury had found for the defendant upon the issue of whether or not the plaintiff was entitled to more than the six weeks rent which had been paid into court, it having been left to them to say whether the tenancy of the defendant was a weekly one, and whether it had been put an end to by a notice to quit. The question now was, whether there had been any error in that. As to whether or not it was a weekly tenancy, the conclusion came to appeared to be right. There was nothing shown from which it could be distinctly inferred what the tenancy really was, and most probably it was a weekly one. Then, as to its having been duly put an end to, the plaintiff seeks to recover on some constructive tenancy, and ought therefore to show that it was a part of the contract that a notice to quit was necessary, and what that notice should be, and in that respect the evidence was deficient. Besides, on the authority of a case of *Huffell v. Armstrong*, 7 Car. & Pay. 56, it would seem that in the case

of a weekly tenancy, no notice to quit was necessary where there existed no usage to that effect, the tenant entering on a fresh week being only bound to pay for that week. But supposing there had been sufficient evidence here of a notice to quit being necessary, there was some proof of its having been given, derivable from the letter of the house agent on the 3rd of Sept., and the plaintiff's reply thereto on the 5th. On the whole, the direction of the learned judge did not appear to be erroneous, nor the verdict of the jury unsupported by the evidence, and no rule ought therefore to be granted.

Rule refuse d.

Barker v. Stead. Hilary Term, Jan. 28, 1847.

PROVISIONAL COMMITTEE-MAN.—DECISION OF A CO-ORDINATE COURT.

The Court of Exchequer having decided the same point as that sought to be raised on showing cause against a rule nisi to enter a nonsuit, this court refused to hear the arguments, holding that the Exchequer decision was to be considered as binding until reversed by a court of error.

In this case a verdict had been obtained against the defendant as the member of a railway provisional committee, for a claim in respect of newspaper advertisements, the only evidence being the fact that the defendant had, with his consent, been put on the provisional committee, and pursuant to leave reserved, a rule had been obtained on behalf of the defendant, calling upon the plaintiff to show cause why a nonsuit should not be entered, on the ground that there had been no evidence to go to the jury of the defendant's liability.

Lush (*H. Hughes* with him) now showed cause. He admitted that the case was not to be distinguished from the cases of *Wylde v. Hopkins*, and *Reynell v. Lewis*, already decided by the Court of Exchequer, but contended that this court would, notwithstanding, hear and decide the present case.

Wilde, C. J. After hearing several arguments upon this point, and taking time to consider, the Court of Exchequer have expressed an elaborate and solemn decision to the effect that the mere circumstance of being one of a provisional committee does not render a party liable in an action like the present. As, therefore, a court of co-ordinate jurisdiction has given a decision on the point, I should say this court ought to consider itself bound by that decision until reversed by a court of error. To adopt a different course would be to place the public in jeopardy as to the state of the law, and give rise to the greatest possible inconvenience. For this reason I think, as the present case cannot be distinguished from those already decided, we ought not to hear the arguments, and that the rule must be made absolute.

Rule absolute.

Exchequer.

Harrison v. Watt. Hilary Term, Jan. 28, 1846.

COSTS.—PAYMENT INTO COURT.

Where a defendant pays money into court in respect of part of the plaintiff's claim, and the plaintiff accepts such payment in satisfaction, and there are other pleas to the residue of the claim upon which issues are joined and found for the defendant, the plaintiff is, nevertheless, entitled to all the costs relating to the payment into court.

THIS was an action of debt for goods sold, money lent, &c. The defendant pleaded, except as to 15s., parcel, &c.; "never indebted," and as to the sum of 15s., payment of that amount into court. The plaintiff joined issue on the first plea, and replied to the second by taking the sum of 15s. out of court. The issue on the first plea was tried and found for the defendant. The Master, on taxation, allowed the defendant the entire costs of the cause; and *Rolfe, B.*, having ordered that the Master should review his taxation, and allow the plaintiff his costs upon the second issue up to the time he took the 15s. out of court, a rule *nisi* was obtained to rescind that order, against which

Bovill showed cause. The rule of Trinity Term, 1 Vict., only applies to cases where the defendant pays money into court to the whole declaration, and the plaintiff replies that he has sustained damage to a greater amount, which issue is found against him. Here the payment into court is limited to part of the plaintiff's claim, so that he was obliged to proceed as to the residue, or pay costs upon entering a *nolle prosequi*.

S. Temple in support of the rule. The taxation in this case has been according to the practice, and is supported by *Cauty v. Gyll*, 4 M. & G. 907, which decided that where money paid into court is taken out in satisfaction of part only of the plaintiff's demand, (there being other issues upon which the parties are proceeding to trial,) the plaintiff is not entitled to tax his costs under the rule of Trinity Term, 1 Vict. [*Pollock, C. B.*—There the plaintiff endeavoured to tax his costs upon the payment into court before the other issues were disposed of. *Platt, B.*—The case of *Goodee v. Goldsmith*, 2 M. & W. 202, seems to resemble the present.] That case is distinguishable, for there the replication was held to amount in effect to a *nolle prosequi*.

Pollock, C. B. The rule must be discharged with costs. The case of *Goodee v. Goldsmith* is quite in point.

Parke, B. The plaintiff is entitled to all the costs relating to the 15s. paid into court, but he must pay costs as to the residue of the proceedings.

Alderson, B. I have a written judgment in a similar case before me at chambers, in which I ordered the plaintiff to be allowed costs in respect of the plea of payment into court.

Platt, B., concurred.

Rule discharged with costs.

PUBLIC FAST.

NOTICE is hereby given, that in consequence of the Public Fast being fixed for the 24th March instant, the Master of the Rolls and the three Vice-Chancellors will take the Motions of the 4th Seal on Tuesday, the 23rd day of March, and that the Lord Chancellor will hear the Motions in his Court on Friday, the 26th day of March instant.

(Signed) E. D. COLVILLE, Registrar.

Registrar's Office, March 12, 1847.

PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

House of Lords.

NEW BILLS IN PROGRESS.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy, Abolishing Court of Review, and Reducing Number of Commissioners. (No. 2.) For 2nd reading. Lord Brougham. Custody of Offenders. Passed. Earl Grey. Government of Prisoners. Passed. Earl Grey.

Criminal Law: Select Committee appointed.

House of Commons.

NEW BILLS IN PROGRESS.

City Small Debts Court. In Committee. Mr. Masterman.

Drainage of Land Act Amendment. In Committee. Sir G. Grey.

Law of Railways. For 2nd reading. Mr. Strutt.

Agricultural Tenant-right. For 2nd reading. Mr. Strutt.

Roman Catholics Relief. In Committee. Mr. Watson.

Pious and Charitable Property. For 2nd reading. Lord J. Manners.

Rating Small Tenements. For 2nd reading. Mr. Waddington.

Markets and Fairs Clauses.—Public Undertakings Clauses.—Gas Works Clauses.—Waterworks Clauses.—Passed. Mr. Strutt.

For the Speedy Trial and Punishment of Juvenile Offenders. For 2nd reading. Sir John Pakington.

To Encourage Life Insurance. Mr. Godson.

NOTICES OF NEW BILLS.

Total Repeal of Punishment of Death. Mr. Ewart. Negatived, 81 against 41.

Inclosure Act Amendment. Sir F. Thesiger.

THE EDITOR'S LETTER BOX.

Some notices of New Books are unavoidably deferred.

The valuable Letters already acknowledged, and others just received, shall be attended to.

The Orders in Council for establishing the "New County Courts" were made on the 9th instant, to the effect stated at page 345, *ante*. The official announcement of the judges appointed will of course be made forthwith.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 20, 1847.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

NEW COUNTY COURTS.

OBSERVATIONS ON THE RULES FOR REGULATING THE PRACTICE.

OUR readers are already in possession of the general rules for regulating the practice of the New County Courts,* as sanctioned by the Chief Baron and four of the common law judges. Those rules, and the forms by which they are accompanied, are to be observed and used in all the courts holden under the act 9 & 10 Vict. c. 97. With respect to the numerous proceedings which may, and, indeed, must arise in practice, to which the general rules are not applicable, and which are not expressly provided for by the act, the 78th section provides, that “the general principles of practice in the Superior Courts of Common Law may be adopted and applied, at the discretion of the judges, to actions and proceedings in their several courts.” Whether it is proposed that each of the judges of the new courts should promulgate a code of rules for his own court, founded on the principles of practice in the Superior Courts of Common Law, or content himself with applying those principles in each particular case as it arises, is, so far as we are informed, left altogether in the individual discretion of the County Court judges.

It is important, however, that those who may be called upon, either professionally, or as parties, to appear in the new courts, should have an accurate conception of the scope and bearing of the general rules

which, it is proposed, should form the groundwork of the practice in those courts. The rules are 52 in number, and an analytical examination will show, to what particular proceeding each rule applies:—

Rules 1 to 3, inclusive, direct the entry of plaint and delivery of particulars by plaintiff.

Rules 4 to 13, inclusive, refer to the issuing and service of summons on defendant.

Rule 14 refers to the service of notices, orders, &c., under the act.

Rules 15 & 16 apply to the payment of money into court by defendant.

Rules 17 & 18, refer to notice of set-off and particulars of set off by defendant.

Rule 19 relates to notice of other special defences.

Rule 20 refers to the notice of demand of a jury.

Rule 21 regulates the notice of application for a new trial or stay of proceedings.

Rule 22 authorizes the retention of money paid into court, pending application to set aside execution or order.

Rule 23 relates to orders for payment by instalments.

Rules 24 to 26, inclusive, relate to proceedings in replevin.

Rule 27, refers to proceedings to enforce execution by or against a stranger to the suit.

Rules 28 to 34, inclusive, relate to proceedings by and against executors and administrators.

Rule 35 regards the number of witnesses and allowance for their attendance.

Rule 36, directs, that the taxation of costs shall be by the clerk.

Rule 37, limits the duration of warrant of execution and commitment to two months.

Rule 38, refers to the service of summons on judgment debtor for examination.

Rule 39, relates to proceedings upon adverse claims to goods taken in execution.

Rules 40 to 49, inclusive, direct the clerk

* See *ante*, p. 415, and for the Forms of Proceedings, *ante*, p. 437.

and high bailiff as to the performance of their duties.

Rule 50, declares when Sundays and holidays are to be reckoned or omitted in computation.

Rule 51, authorizes the clerk to issue forms when not specially provided for.

And rule 52 directs, how the preceding rules are to be interpreted.

A cursory review of the foregoing analysis will at once suggest, to those who are conversant with common law practice, how much is left wholly to the discretion of the judge, and in how many proceedings of frequent occurrence the practitioner will necessarily find himself in a position of perplexity and difficulty, if left without further regulations for his direction and guidance. Without staying to point out the various proceedings which appear to have escaped the attention, or were deemed unworthy of the notice of those who framed the rules for regulating the practice of the new courts, it may be advantageous shortly to consider the general tendency and effect of those rules, and to observe in what respects they correspond with or differ from the rules which govern the practice in the Superior Courts of Law.

The first step on the part of a plaintiff is, the entry of his plaint in a book kept at the office of the court, (r. 1.) which proceeding resembles the filing of a *præcipe* in an action brought in the superior court; and contemporaneously with the entry of the plaint, in all cases where he seeks to recover a sum exceeding 5*l*., the plaintiff is required to lodge as many copies of his particulars as there are defendants, and an additional copy to file, (r. 2). Where the sum claimed is under 5*l*., the plaintiff is relieved from the obligation of giving any particulars, a dispensation the expediency of which may be well questioned, as it is often as desirable to have a particular of a small demand as of one of larger amount, and the facility with which the particular may be framed would seem to be an additional reason for requiring it when a trifling amount is sought to be recovered. To which it may be added, that a written statement of the plaintiff's demand would save an infinite deal of time and trouble to the judge as well as the defendant at the hearing of the plaint. These considerations, however, have not prevailed, and, as already stated, the plaintiff is only to be prepared with particulars of his demand when it amounts to more than 5*l*. When

the plaintiff's claim exceeds 5*l*., it would seem that he must be prepared with particulars whatever may be the nature of the suit. In the superior courts particulars are only required as of course, when the declaration contains the common counts in debt or assumpsit, and they are seldom or never ordered in actions for torts. In the County Courts, however, we apprehend there must be particulars lodged in actions of tort as well as those of debt, the distinction not being with regard to the nature of the action, but the sum claimed. The nature and form of the particulars is left to the discretion of the plaintiff in the first instance, with only this inducement to lodge sufficient particulars, that the judge, if he think fit, may adjourn the cause at the hearing for the delivery of further or better particulars. In the superior courts, if incorrect or insufficient particulars be delivered, they may be amended or better particulars obtained before any considerable expense is incurred. In the County Courts the delivery of defective particulars can only be remedied after all the expenses incidental to a trial have been incurred.

The summons to appear is to bear date on the day the plaint is entered, (r. 4.) and, with the particulars of demand annexed, (r. 5,) must be served ten clear days before the day of its return, (r. 6). Some doubt is entertained whether the day on which the defendant is summoned to appear is that intended to be fixed for the hearing of the cause, or whether it is intended that an appearance should be entered for the defendant some day before the day of trial, in conformity with the practice of the superior courts. We confess we can see nothing, either in the statute or general rules, which affords any foundation for the supposition that it is intended there should be any proceeding in the County Courts resembling or equivalent to an appearance for the defendant. The consequences of this omission we shall hereafter remark upon.

The service of the summons may be either personal, or by delivery at the defendant's place of abode, or place of business, (r. 7); but the circumstance that the one description of service or the other has been effected creates an important distinction, well deserving of attention. Under the 98th section, the debtor against whom a judgment has been obtained which remains unsatisfied, may be examined on summons, and committed to prison for a

period not exceeding forty days, a provision borrowed from the stat. 8 & 9 Vict. c. 127. This proceeding is in the nature of a substitute for arrest on final process, but it is only available when the defendant has been served personally with the summons to appear in the first instance: when the summons has been served at the defendant's residence or place of business, there is no power of examination or commitment after judgment, and the judgment debtor who has no goods liable to seizure may set the law and his creditors alike at defiance. The consequences of this distinction between personal service and other service would be less objectionable if the description of service depended in any degree upon the diligence of the plaintiff or those employed by him; but it is one of the leading principles of the new measure, that the service of process and of all notices and proceedings under the act is to be intrusted, not to any person nominated by the parties, but to the bailiff appointed by the court. Now we do not find in the schedule of fees that the bailiff is allowed any greater fee for personal service than when he serves the defendant by leaving the summons at his dwelling or place of business. The fee in either case ranges from 3*d.* to 1*s.* 6*d.*, according to the amount of the plaintiff's demand.^b There may be no lack of zeal on the part of the bailiff in the discharge of his duty, but it is not unreasonable to suppose that the bailiff of the County Court will be subject to ordinary influences, and that if he should not find the defendant at home on his first call to serve the summons, he will avoid the trouble of calling again, by delivering the summons "to some person at the place of abode or place of business of the defendant," which will be a literal compliance with the terms of the rule. It is quite obvious that if service other than personal is sufficient to justify the court in proceeding to judgment, it ought to be considered sufficient to justify an award of imprisonment against a fraudulent or contumacious debtor. In any event, it is monstrous that the power of imprisonment and the remedy the apprehended exercise of it affords to the creditor, should depend upon the nature of the service effected by a bailiff over whom the plaintiff has no control.

The 11th rule provides, that where a summons to appear shall not have been

served personally, and the defendant does not appear at the return day, it must be proved to the satisfaction of the judge that the service came to the knowledge of the defendant ten clear days before the return day. The rule does not proceed to state what is to be the result where the defendant does not appear and it is not proved to the satisfaction of the judge that the service was brought to the knowledge of the defendant. We presume that the proceedings must commence *de novo*, and the plaintiff and his witnesses come again on a future day. How much more convenient it would be if the plaintiff could be informed, a reasonable time before the day of hearing, that a sufficient service could not be effected, and that he and his witnesses need not attend.

Rapidity is of the essence of the new measure. What is to be done must be done quickly. The defendant who determines to pay money into court, (r. 15,) or to set off a debt alleged to be due by the plaintiff, (r. 17,) or to rely on any of the special defences which require notice, (r. 19,) must give notice in writing of his intention to the clerk of the court five clear days before the summons is returnable, and at the same time pay the money, or lodge his particulars of set off, as the case may be. On the other hand, when money is paid into court, the plaintiff must elect within two days whether he will accept the sum so paid, in full satisfaction for his demand, as the clerk of the court and the defendant must have notice of such determination three clear days before the return of the summons, (r. 16). The capricious selection of cases in which notice is required of special defences has already been commented upon.^c The only cases in which the plaintiff is to have any notice up to the moment of trial of the line of defence his adversary is prepared to adopt is, where the defendant intends to rely upon the defence of, infancy, coverture, the Statute of Limitations, set-off, or a discharge under the Bankrupt or Insolvent Acts. We are at a loss to understand why the suggestion of the Common Law Commissioners in this respect has been departed from. Their proposition was,^d that in an action for a debt, if the defendant meant to insist that the debt had been in any manner satisfied or barred, he should notify his intention;

^b *Ante*, vol. 32, p. 570.

^c Schedule D., High Bailiff's Fees. See *ante*, vol. 32, p. 437. j

^d See extract from the Fifth Report of C. L. C., *ante*, vol. 32, p. 474.

and in like manner in actions of trespass, that the defendant should notify his intention to insist on any matter in justification, excuse, or discharge. As the matter now stands, the plaintiff will be liable to have a defence suddenly started at the trial which he did not anticipate, and for which he could not be prepared. Whether it meant that a defendant should be at liberty to wield as many distinct defences as his own ingenuity or the circumstances of the case will admit, is left in doubt; but we apprehend, as the multiplication of defences is not prohibited, that any defence must be allowed which would operate either in fact or in law as an answer to the plaintiff's claim.

Either party, we presume, is at liberty to demand a jury where the debt or demand claimed exceeds 5*l.*, and it is sufficient if such demand be made in writing two clear days before the return of the summons, (r. 20). The clerk is then to give notice to the adverse party that a jury has been demanded, (Form No. 11); but there is no provision which renders it obligatory on either party to give notice to the other that he proposes to appear by counsel.

The absence of any regulation by means of which it can be ascertained at an early stage, and before any considerable expense or trouble is gone to, whether the defendant admits or denies the plaintiff's claim, appears to us to be a palpable defect in the system of procedure about to be established in the new courts. It must constantly happen in the County Courts, as in the Superior Courts, that a defendant is unable or unwilling to satisfy the plaintiff's demand, and yet is conscious that he has no defence to rely upon, and therefore suffers judgment to pass by default. According to the course of proceeding in the County Court, however, the plaintiff has no means of knowing whether it is or is not intended to resist his claim, up to the moment when the cause is called on for trial, and must be in attendance with his evidence and witnesses, ready to meet every possible defence, when in point of fact there is no adversary to contend against. A greater regard for economy in this and some other particulars in which expense is needlessly thrown upon the suitors in the new courts, would enable them to afford an adequate remuneration for professional assistance, and a sufficient allowance to witnesses for their attendance. The inadequacy of the scale of allowance to witnesses, as fixed by the general rules, involves considerations of too much import-

ance to be hastily disposed of, and must be reserved for a future number.

TAXES ON THE ADMINISTRATION OF JUSTICE.

THE usual annual return of the Accountant-General of the Court of Chancery has just been printed. It appears from this document that the amount paid out of the Suitors' Fund and Suitors' Fee Fund in the last year exceeds 200,000*l.* for the salaries of judges, officers, clerks, &c., and compensations to the late holders of abolished offices.

All this vast sum which, in the first instance, principally comes from the pockets of the practitioners, and finally falls on the poor suitors, ought to be paid out of the consolidated fund of the state. It is to be hoped that the inquiry for which Mr. Watson will move after Easter, will bring the subject before parliament in a shape that can no longer be resisted, and that redress will speedily follow.

SECONDARY PUNISHMENT.

MODIFIED SYSTEM OF TRANSPORTATION.

THE important experiment the government is about to make with regard to persons sentenced to the punishment of transportation, has naturally excited considerable attention and observation in and out of parliament. Persons otherwise well-informed who had not the facility of access to official channels, were necessarily but imperfectly acquainted with the facts bearing upon the question, and although much valuable information is to be gleaned from the recent debates, we deprecate the adoption of any measures involving consequences so momentous to society, until the facts have been fairly sifted and weighed, and the whole subject maturely considered.

As the letter of Sir George Grey to the Secretary for the Colonies is the basis of the plan proposed by government, we print the principal passages, reserving our commentary for a future occasion. After expressing his conviction, that—

“ Experience has abundantly proved the impossibility of carrying on, for any length of time, the transportation of a large number of convicts from year to year to a penal colony, without producing evils of the most formidable character, seriously affecting the social and moral con-

dition of the colony, and destructive of any rational hope of rendering the punishment conducive to the reformation of the convicts," the right hon. bart. proceeds to state:—

"In consequence of the complaints received from New South Wales, it was determined in 1840 to discontinue transportation to that colony; and this decision was carried into effect by an order in council made on the 22nd May, in that year, in pursuance of the provisions of the act of the 5 Geo. 4, c. 84, for the transportation of offenders from Great Britain.

"From that period to the present, the places to which convicts sentenced in Great Britain to transportation could legally be sent, in execution of their sentence, have been Van Diemen's Land, Norfolk Island, and Bermuda and Gibraltar.

"At the time of the discontinuance of transportation to New South Wales, it had been determined to erect the Model Prison at Pentonville, which was subsequently completed in 1842, by means of which and of the arrangements connected with the system there to be pursued, it was hoped, that the number of persons on whom the sentence of transportation would be carried into effect would be considerably diminished.

"In 1843, a further change took place. Pentonville Prison was then open. The practice of sending prisoners sentenced to transportation to the hulks (except in the case of invalids unfit for transportation) was discontinued; and the number then in the hulks has been allowed gradually to decrease, by the expiration of the sentences, or the earlier liberation of the convicts. The prison of Millbank was at the same time placed, by act of parliament, on a new footing. It was converted from a penitentiary into a dépôt prison, under the superintendence of three of the prison inspectors, to be selected by the Secretary of State, with the ordinary powers of visiting justices. To this prison all persons sentenced in Great Britain to transportation, have from that time been sent in the first instance. After a short detention there, the prisoners have been disposed of under the authority of the Secretary of State, on the recommendation of the inspectors, in the following manner:—A certain number of adult male convicts have been selected from time to time from among them, and have been sent to Pentonville prison. They have there been subjected to a system of separate confinement for a limited period, as detailed in the reports laid before parliament from the commissioners of Pentonville; and at the expiration of the period of imprisonment, the maximum of which has been fixed at eighteen months, those whose conduct has been satisfactory have been sent to Port Philip, under the denomination of 'exiles,' which conditional pardons, to take effect on their arrival there: the only restraint on their freedom being the condition, that they shall not return to this country during the term of their original sentence. The remainder of the Pentonville prisoners, whose conduct has not entitled them to this indulgence, have been

sent to Van Diemen's Land as convicts, but in most cases with certain advantages not possessed by ordinary convicts.

"The rest of the adult prisoners in Millbank have been transported direct from that prison to one or other of the places appointed for the purpose.

"The following is a statement of the mode in which, since the beginning of this system, adult male convicts have been disposed of after their reception at Millbank.

	1843.	1844.	1845.
Pentonville	497 ..	240 ..	283.
Bermuda	330 ..	150 ..	400
Gibraltar	100 ..	— ..	350
Van Diemen's Land	2,420 ..	1,888 ..	1,629
Norfolk Island . .	199 ..	684 ..	419
Invalid Hulks . .	38 ..	98 ..	148

"Female convicts sentenced to transportation have, with few exceptions, been transported to Van Diemen's Land.

"Boys, of whom a considerable number have, during the same period, been annually sent to Millbank under sentence of transportation, have been separately dealt with. Those of the worst character have been transported to Van Diemen's Land, but placed on their arrival there in a distinct penal establishment at Tasman's Peninsula, appropriated exclusively to boys. A large proportion of the remainder have been sent to Parkhurst prison, from whence, after a period of imprisonment, such as were considered fit to be so disposed of, have been sent to some of the Australian colonies, with conditional pardons. Others have received pardons on condition of their being admitted into the Refuge at Hoxton, under an agreement by which that establishment, in consideration of an annual grant from parliament, is bound to receive and provide for the care and maintenance of any number of boys sent to it by the government, for whom there is accommodation; and by a late arrangement a certain number have been received into the Philanthropic Institution, on the payment of an annual sum for their maintenance."

Having thus described the system recently acted on, the letter proceeds to state, that considerations connected with the state of society in the colony, induced the government in June last to determine to suspend the transportation of male convicts to Van Diemen's Land, and that it had been more recently resolved to break up the penal establishment at Norfolk Island. The writer deems it illusory to expect to be able to recur to the former system, and has come to the conclusion, that the transportation of male convicts to Van Diemen's Land ought to be wholly abandoned. The outline of the system he proposes to substitute, we give in his own words:—

"The plan I propose should be adopted, is

a limited period of separate imprisonment, succeeded by employment on public works, either abroad, as at Gibraltar and Bermuda, or in this country; and ultimately followed, in ordinary cases, by exile or banishment for the remaining term of the original sentence.

"It is intended that the first stage, that of separate imprisonment, should in no case exceed eighteen months; and that the average term of such imprisonment should not be more than one year. It is proposed that this imprisonment should take place either in Pentonville prison, or in such of the prisons in the country as shall be ascertained, on inspection, to have made arrangements properly adapted for carrying out the system of separate imprisonment, and in which spare accommodation exists beyond what is required for local purposes. It is computed, that in addition to the 500 cells in Pentonville, there are, or shortly will be, available in other prisons, a large number of cells for the reception of prisoners sentenced in Great Britain to transportation; and measures are in progress for the erection, in Ireland, of a prison on the model of the Pentonville prison, for the reception of Irish convicts. It is further proposed, that this separate imprisonment should, towards its close, be gradually relaxed, with a view to prepare the prisoners for the second stage of punishment, employment on the public works.

"It is intended, that on the expiration of the period of separate imprisonment, the prisoners shall be sent, as at present, to Millbank; and that they shall be sent from thence, according to the circumstances of their respective cases, either to Bermuda or Gibraltar, or to other places which may be appointed by her Majesty in council, out of England, or to employment on public works in this country, such as the construction of harbours of refuge or works under some public department.

"Before any convicts will enter on this second stage of their punishment, they will have passed through a course of separate imprisonment, accompanied by a system of moral and religious instruction and of industrial training which, it is hoped, will in most cases be attended with a beneficial effect on their character, and have prepared them for that intercourse with their fellow-prisoners which is inseparable from any plan for the employment of convicts on public works, and which, under certain restrictions, may in itself be made conducive to the progress of their reformation, and to their preparation for a return to society on the expiration of their sentence.

"While in this stage of their punishment, care will be taken for providing them with proper accommodation, efficient superintendence, and an adequate means of moral and religious instruction; and it is intended that incentives to industry and good conduct should be furnished by adopting, with such improvements as experience may suggest, the system recommended by Colonel Reid and Captain Maconochie. Its most important features are, that the convicts work by task, and that a re-

gular register is kept of the amount of work done by each convict, and of his conduct, by which means the labour is no longer exacted by the mere influence of fear or coercion, as in the case of slave labour, but motives of a higher class are called into action by the offer of advantages, both immediate and prospective, to the industrious and well-conducted.

"On the release of prisoners from this second stage of punishment, it appears to me of the highest importance that in connexion with the remaining portion of their sentence, they should not be deprived of the advantage of entering on a new course of life, and of obtaining a livelihood by honest industry. As the system proposed to be pursued in the management of convicts will be of a more reformatory character than has hitherto been possible to adopt on any extensive scale, it may be hoped that a large number, at least, of the convicts who will have been subject to it will have acquired principles which will dispose them, if placed in favourable circumstances, to avail themselves of the opportunity of becoming useful members of society. It is proposed, therefore, that, as a general rule, and whenever the conduct of the prisoners may render them fit subjects for the indulgence, conditional pardons should be granted to them after a certain time passed in penal labour; the term of such labour varying according to the length of the sentence, the conduct of the prisoner, and other circumstances. The condition of the pardon would be the same as that now enforced in the case of the exiles from Pentonville; namely, that they shall quit this country, and not return to it during the term of their original sentences.

"It is proposed that on obtaining the conditional pardon, the only restriction on the liberty of the persons holding such a pardon should be the prohibition of remaining in this country; and that facilities for emigration should be afforded them individually, instead of collectively, a portion of the earnings of each prisoner during the period of his imprisonment and employment on public works being applied towards the expenses of his emigration, or, in certain cases, reserved towards defraying the expense of sending out his family.

"In addition to the general plan thus contemplated, there will probably be cases in which the mercy of the crown may safely be exercised in favour of prisoners, without enforcing the condition of exile, where their friends, or other persons of character and respectability, may undertake, on their liberation, to receive and provide employment for them, or become answerable for their future conduct.

"The number of women sentenced to transportation is comparatively small; and for the present I do not propose that any alteration should be made in the manner of disposing of them.

"The case of juvenile offenders requires separate consideration.

"The mere punishment of this class of offenders by imprisonment has been proved to be attended with the worst results. The asso-

ciation with older and more experienced offenders has fostered and confirmed the tendency to vice. The system applicable to them should have less of a strictly penal, and more of a purely reformatory character, than can, with a due regard to the interests of society, be safely applied in the case of adults. The result of such a system, wherever it has been tried, justify sanguine expectations of its success if it were to be generally adopted. The experience of such institutions as that of Mettray, in France, and of the Ranke Hans, near Ham-burgh, in the case of children of a strictly criminal class, and that of schools which have been recently established by private benevolence in this country, for the reception of children of the lowest class, rescued by their means from habits of mendicancy, vagrancy, and theft, have sufficiently proved that the heart even of the most neglected and depraved is at an early age peculiarly susceptible to kindness and affection; and that a judicious application to them of a system founded on these principles, and combined with religious and other useful instruction, and with industrial training, is calculated to produce a powerful effect on their feelings and character. With a view to the application of such a system, it has been determined, with the aid of the Committee of Council on Education, and in connexion with a Normal School for training prison schoolmasters, to establish a penal school in the neighbourhood of London, to which boys under a certain age sentenced to imprisonment or transportation shall be sent, either, in ordinary cases, after a temporary imprisonment, or immediately after their conviction, where the tender age of the child or the circumstances of the case should, in the opinion of the court before which he has been convicted, or of the Secretary of State, render such a course expedient. The great object of this school will be the reformation of its inmates, and the inculcation of those principles and habits which may best fit them for a future course of honest industry. The establishment will be a place of religious, moral, and industrial education, rather than a place of punishment.

"One such establishment will, of course, be very inadequate to the wants of the country; but I trust that means will be found for the formation of establishments with the same object, and founded on similar principles in other places.

"The ultimate disposal of juvenile offenders on the expiration of their sentences, is a question of much difficulty. With regard to the elder ones, I propose that the present practice of granting conditional pardons should, in fit cases, be continued, and facilities afforded them for emigration, as in the case of adults. With regard to the others, a contemplated union between the Refuge for the Destitute and the Philanthropic Society, and the consequent formation of a joint establishment in a situation affording the opportunity of agricultural and other out-door employments, would, if carried into effect, offer great advantages in providing

for a considerable number of boys on their discharge either from prison or from the penal school."

The letter concludes by stating, that "if the plan be permanently adopted, it will be necessary to embody it in a bill to be submitted to parliament; and it will also be expedient to revise the statutes by which offenders are made liable to the punishment of transportation. In the meantime, the proposed measures may be adopted under the power exercised by the crown of commuting sentences of transportation, or of directing the disposal of convicts under sentence of transportation, as in the case of prisoners sent to the hulks or to Pentonville, as well as in other cases of frequent occurrence."

ADMISSION OF ATTORNEYS IN INFERIOR COURTS.

THE Court of Queen's Bench has decided, in *ex parte Ashurst*, that the attorneys and solicitors of the Superior Courts at Westminster are entitled, under the 6 & 7 Vict. c. 73, s. 27, to be admitted into the Lord Mayor's Court of the city of London as an inferior court.

The words of the section are:—"That every person who shall have been duly admitted an attorney of any of the Superior Courts of Law at Westminster, shall be entitled, upon the production of his admission therein, or an official certificate thereof, and that the same still continues in force, to be admitted as an attorney in any other of the said courts, or in any *inferior court of law* in England and Wales, upon signing the roll of such other court, but not otherwise, and shall thereupon be entitled to practise as an attorney therein in like manner as if he had been sworn in and admitted an attorney of such court." And there is the like provision regarding inferior courts of equity.

There can be no doubt that the Lord Mayor's Court is an "inferior" court to the courts at Westminster; but it seems that the city is unwilling to submit to this decision, and has lodged an appeal to the House of Lords.

Consequent upon this decision several attorneys have applied for admission into the Palace Court, but they have been refused until the question of the Lord Mayor's Court has been finally settled.

The six attorneys of the Palace Court will of course be entitled to be heard when the question again comes on for discussion. In the mean time, it seems, they are willing to transact business in that court for attorneys of the Superior Courts on *agency terms*.

THE LAST NEW BANKRUPTCY AND INSOLVENCY BILL.

THE ink was scarcely dry by which we endeavoured to convey to our readers the impression a perusal of Lord Brougham's first bill of this session in relation to bankruptcy and insolvency left on our minds, when his lordship asked leave to withdraw this bill and substitute a second, embodying, as he stated, various suggestions made to him by the Commissioners of Bankruptcy in town and country.

The first bill contained 27 clauses, the second bill is extended to 42 clauses. The principal provisions of the first bill are retained, with some few alterations, and the crude notions of those with whom his lordship has been in communication have been imported into the new bill, without much regard to consistency, or any serious intentions, we should hope, of inflicting them on the country, until they have been thoroughly considered and digested. As it is desirable, however, that our readers should be in possession of all that is proposed on this subject, we subjoin the clauses contained in the second bill which are not to be found in the bill already printed.*

5. That the jurisdiction hereby transferred and given to the court for relief of insolvent debtors and the judges of county courts aforesaid shall be vested in them severally over the cases of insolvents petitioning under such herein-before recited acts, notwithstanding that they or any of them so petitioning may not be or appear to be possessed of any property, and notwithstanding that they or any of them so petitioning may have previously to filing their or his petitions petitioned under any other act than the acts hereinbefore recited or this act.

6. That in case of any person petitioning under the powers of this act or of the acts hereinbefore recited shall satisfy the court or judge before whom the said person shall be examined that he has made a full disclosure, and has applied in due time for protection, and has not unduly delayed making distribution of his property among his creditors, it shall be lawful for the said court or judge, having regard to such conduct of such petitioner, and also to the amount of the dividend which he has given the means of paying to his creditors, to add to the final order an order protecting the future acquired estate and effects of such petitioner, from all process of his creditors in his schedule mentioned, which order shall be effectual

to discharge all debts previously to the date of his petition contracted, as fully as if such petitioner had been made bankrupt, and had obtained his certificate.

10. That every commissioner of her Majesty's court of bankruptcy and district courts of bankruptcy shall have power to rehear every question of certificate, if he shall think fit, and to confirm, recall, or vary any previous order made thereon, or to make such other order in the matter as to him on such re-hearing shall seem proper.

22. That any commissioner of the court of bankruptcy or district court of bankruptcy

insolvent debtors, or judge of the county courts aforesaid, acting in the matter of any insolvency, may at any time suspend or withdraw the protection by him granted to any bankrupt or insolvent as to his person and property, or as to either of them, as to him may seem just and expedient, and may again renew and again suspend the same from time to time; provided always, that if any commissioner or judge shall die or otherwise cease to act in the same court or district as when such order was granted, his successor in such court or district shall have the same power of suspending, withdrawing, or renewing as the commissioner or judge so dying or ceasing to act would have had if he had continued to act in such court or district.

23. That the assignee or assignees of the estate and effects of any bankrupt or insolvent shall from the time of the bankrupt's or insolvent's accounts becoming records of court be deemed judgment creditors of such bankrupt or insolvent for the total amount of which such bankrupt or insolvent shall thereby admit himself to be indebted to all his creditors; and that if the commissioner acting in the matter of such bankruptcy, or the commissioner or judge acting in the matter of such insolvency, shall think fit to withdraw or suspend the protection granted to the bankrupt or insolvent as to his person, he shall, on the application of such assignee or assignees, grant to him or them a certificate according to the form specified in the schedule to this act annexed marked (A.), which shall have the same force and effect as a judgment of her Majesty's court of Queen's Bench for the sum therein specified.

24. That every creditor of a bankrupt or insolvent who shall have proved his debt shall from the time of his proving such debt be deemed a judgment creditor of such bankrupt or insolvent for the sum so proved; and that if the commissioner acting in the matter of such bankruptcy, or the commissioner or judge acting in the matter of such insolvency, shall think fit to withdraw or suspend the protection granted to the bankrupt or insolvent as to his person or property, or both, he shall, on the application of any creditor so admitted, grant to him a certificate thereof according to the form specified in the schedule

* See *ante*, page 411.

to this act annexed marked (B.), which shall have the same force and effect as a judgment of her Majesty's court of Queen's Bench for the sum therein specified.

25. That the assignees or assignee or any creditor holding such certificate may procure the same to be sealed with the seal of the court of bankruptcy, or court for the relief of insolvent debtors, or county court aforesaid, and upon producing such certificate so sealed to the proper officer of her Majesty's court of Queen's Bench may procure the proper writ of *capias ad satisfaciendum* or *feri facias* against such bankrupt or insolvent, or his property, as the case may be, to be sealed, in the same way in which he might have done if he had recovered a judgment against such bankrupt or insolvent in her Majesty's court of Queen's Bench, and had produced to the proper officer the judgment paper.

26. That if any bankrupt or insolvent shall be in prison under a *capias ad satisfaciendum* so issued as aforesaid, the court having jurisdiction in the matter of his bankruptcy or insolvency may order his release after he shall have undergone such imprisonment, not exceeding one year, as to such court shall seem sufficient punishment for the offences of which he may have been guilty.

27. That whenever a bankrupt whose certificate the court shall have refused or suspended, or an insolvent to whom the court shall have refused his final order, shall appear to any creditor who shall have proved his debt to be in possession of property which might be seized for the benefit of the creditors, but which has not been so seized, he may apply to the commissioner or judge acting in the matter for an order upon the assignee or assignees to show cause why he should not be permitted to seize the same, at his own risk, for his own benefit, upon which application the court may order, unless cause be shown to the contrary, that such creditor may cause such property to be seized under the usual writ of *feri facias* at his own risk, and may apply the proceeds in discharge of his own debt and costs, rendering the overplus, if any, to the official assignee entitled to receive the same.

28. That if any bankrupt or insolvent, not being protected from process, shall, with the consent of the true owner thereof, be in possession of any goods or chattels whereof he is reputed owner, such goods and chattels shall be liable to be seized under a writ of *feri facias*, for the benefit of any person who may have issued the same.

29. That the clerk of any county court having jurisdiction in matters of insolvency, or his clerks, shall enter in a book to be kept in the office of such clerk for that purpose the name and description of every insolvent debtor petitioning such court, together with the date on which his petition was filed, and shall once in every month transmit to the chief clerk of the Insolvent Debtors Court in London a transcript or copy of the entries so made in

such books during the preceding month; and that such transcripts or copies shall be certified by the judge of every county court, and shall by such chief clerk aforesaid be entered in a general book or index which shall be kept at the Insolvent Debtors Court in London, and be open to public inspection on the payment of such fee as is now charged for any search made in that court.

33. That from and after the passing of this act it shall be lawful for any registrar of the court of bankruptcy or district courts of bankruptcy, during vacation, or during the illness or necessary and unavoidable absence of any commissioner thereof, to act for and as the deputy of such commissioner in the prosecution of any fiat in bankruptcy, and in all other matters within the jurisdiction of such commissioner; and that such registrar so acting shall have and exercise all power vested in such commissioner, except the power of commitment, the hearing of any disputed adjudication, disputed proof of debt, question of the allowance or suspension of any bankrupt's certificate, or the hearing or determining of any other disputed matter whatsoever: Provided always, that all depositions taken before such registrar, and all acts done by him, shall be reduced to writing, and shall be annexed to and form part of the proceedings under such fiat.

ORDER OF THE COURT OF CHANCERY.

EASTER VACATION.

15th March, 1847.

WHEREAS, by the 1st Article of the 8th of the General Orders of the High Court of Chancery of the 8th day of May, 1845, it is provided that the Easter Vacation is to commence and terminate on such days as the Lord Chancellor shall every year specially direct: Now I do hereby order that the *Easter Vacation* for the present year shall commence on *Good Friday, the 2nd day of April next, and terminate on Saturday the 10th day of April next*, both days inclusive; and that this order be entered by the registrar of this court and set up in the several offices.

(Signed) E. D. COLVILLE.

Registrar's Office, March 16, 1847.

PETITIONS FOR THE REPEAL OF THE ATTORNEYS' CERTIFICATE DUTY:

	Signatures.
Former petitions, 12	195
Further petitions from attorneys and Solicitors of Bradford, (Mr. Sotherton) .	5
Attorneys and solicitors of Wincanton, (Mr. Miles)	6
Total petitions, 14,—signatures . .	206

DISTRICTS OF THE NEW COUNTY COURTS.

THE Small Debts Act will be found at pp. 455, 475 of the last volume; a summary thereof at p. 449; notes on the judgeships, p. 497: practitioners and costs, p. 521; principles of the act, 569; jurisdiction, 593, 617.

The rules of practice are given at p. 415, in the present volume, and the forms of proceeding, p. 437. And see notes, p. 457, *ante*.

The orders in council under the act were notified at p. 345, *ante*; with the names of the towns at which the courts will be holden. The precise districts of the courts are set out fully in a Supplemental Gazette of Wednesday the 10th instant. The following are extracted from it, and the remainder will be comprised in the next number. Thus, the whole matter will be in the possession of our readers, and every kind of useful information on the subject will be collected as speedily as practicable.

BEDFORDSHIRE.

Amphill,^a *Amphill*.^b
Bedford, Bedford.
Biggleswade, Biggleswade.
Leighton Buzzard, Leighton Buzzard, Woburn.
Luton, Luton.

BERKSHIRE.

Abingdon, Abingdon, including the parish chapelry of Wootton and parish of Besselsleigh, but excepting all the rest of the sub-district of Cumner (see *Oxford*).
Farringdon, Farringdon.
Hungerford, Hungerford.
Newbury, Newbury, Kingsclere.
Reading, Reading, Wokingham, Bradfield. Henley, except the sub-district of Watlington and parishes of Fawley, Hambleden, and Medmenham (see *Wallingford and Great Marlow*).
Wallingford, Wallingford. The sub-district of Watlington, in Henley, consisting of the parishes of Watlington, Brightwell Baldwin, Britwell Salome, Bix, Cuxham, Pishill, Pirton, Swincombe, and chapelry of Britwell Prior.
Wantage, Wantage.
Windsor, Windsor, except the sub-district of Egham (see *Chertsey*). Eton, except the sub-district of Iver (see *Uxbridge*). Easthampstead. Cookham, except the parishes of Bisham and Hurley (see *High Wycombe*).

BUCKINGHAMSHIRE.

Aylesbury, Aylesbury, except the parishes of Choulesbury and Hawridge, and Hamlet of Saint Leonard's (see *Chesham*). The parishes of Wendover, Ellesborough, Great and Little Kimble, Stoke Mandeville, and Ilmire. The sub-district of Tring in Berkhamstead, consisting of the parishes of Tring, Wigginton, Marsworth, Puttenham, Aldbury, and Finton.

^a Towns in which courts are to be holden.

^b Superintendent Registrar's districts, parishes, chapelries, townships, tithings, hamlets, or precincts forming the district of each court town.

Buckingham, Buckingham, Winslow.
Chesham, Amersham, except the sub-district of Beaconsfield (see *Great Marlow*). The chapelries of Bovindon and Flaunden, in the parish of Hemel Hempstead. The parishes of Choulesbury and Hawridge, and the hamlet of St. Leonard's. Berkhamstead, except the sub-district of Tring (see *Aylesbury*).

High Wycombe, The sub-district of Beaconsfield, in Amersham, consisting of the parishes of Beaconsfield and Penn, and the hamlet of Seer Green, in the parish of Farnham Royal. Wycombe, except the parishes of Wendover, Ellesborough, Great and Little Kimble, Stoke Mandeville, and Ilmire (see *Aylesbury and Thame*). The parishes of Bisham and Hurley. The parishes of Fawley, Hambleden, and Medmenham.

Newport Pagnell, Newport Pagnell. The parishes of Calverton, Stoney Stratford, and Wolverton.

CAMBRIDGESHIRE.

Cambridge, Cambridge, Caxton and Arrington, Chesterton.

Ely, Ely.

March, North Whichford.

Newmarket, Newmarket, except the parishes of Soham, Fordham, Isleham, and Wicken (see *Soham*).

Soham. The parishes of Soham, Fordham, Isleham, and Wicken.

Wisbeach, Wisbeach, except the parishes of (Leuchwarton, Terrington St. Clement, Terrington St. John, Tilney All Saints, Tilney St. Lawrence, Tilney-cum-Islington (see *King's Lynn*).

CHESHIRE.

Altrincham. Altrincham, except the sub-districts of Knutsford and Wimslow and parish of Lymm (see *Knutsford and Warrington*).

Birkenhead, Wirral.

Chester, Great Boughton.

Congleton, Congleton.

Hyde, The sub-districts of Denton and Haughton, Newton and Godley, and Mottram, in Ashton and Oldham, consisting of the townships of Denton and Haughton in the parish of Manchester, and the townships of Godley, Hattersley, Hollingworth, Mottram, Newton, and Tintwistle, except the hamlet of Micklehurst, in the parish of Mottram in Longdendale. The sub-district of Hyde, in Stockport, consisting of the chapelry of Hyde and the townships of Bredbury and Werneth, in the parish of Stockport.

Knutsford, The sub-districts of Knutsford and Wimslow, in Altrincham, consisting of the parishes of Mobberley, Knutsford, Nothern; the townships of Peover Inferior; Pickmere; Plumley and Tabley Inferior in the parish of Great Budworth; Marthall with Little Warford, Mere, Peover Superior, Rostherne, Tabley Superior, and Tatton, in the parish of Rostherne; Bollinfee, Fulshaw, and Pownall-fee, in the parish of Wilslow.

Macclesfield, Macclesfield.

Nantwich, Nantwich, except the townships of Audlem, Bickley, Buerton, Doddcott with Wilkealey, Hampton, Maccfen, Marbury with Quaisley, Narbury, Tushingham with Grindley and Wirswall (see *Whitchurch*).

Northwich, Northwich. The township of Great Budworth, in Runcorn.

Runcorn, Runcorn, except the sub-districts of Grappenhall and Great Budworth (see *Warrington and Northwich*).

Stockport, Stockport, except the sub-district of Hyde (see *Hyde*).

CORNWALL.

Bodmin, Bodmin.
Camelford, Camelford.
Falmouth, Falmouth.
Helston, Helston.
Launceston, Launceston.
Liskeard, Liskeard.
Penzance, Penzance, Scilly Islands.
Redruth, Redruth.
St. Austell, St. Austell.
St. Columb Major, St. Columb.
Truro, Truro.

CUMBERLAND.

Alston, Alston, The parishes of Kirkhaugh and Karsendale.
Carlisle, Brampton, Carlisle, Longtown.
Cockermouth, Cockermouth, except the sub-district of Keswick and chapelrys of Newlands and Buttermere (see *Keswick*).
Keswick, The sub-district of Keswick, in Cockermouth, consisting of the parish of Bassenthwaite; the townships of Borrowdale, Keswick, Under-skiddaw, St. John's Castlerigg, and Wythburn, in the parish of Crosthwaite; the chapelry of Wythop, in the parish of Lamplugh; the chapelry of Embleton, in the parish of Brigham; and the township of Bewaldeth, in the parish of Torpenhow. The chapelrys of Newlands, Buttermere, and Threlkeld.
Pearrith, West Ward, Penrith, except the chapelry of Threlkeld (see *Keswick*).
Whitehaven, Bootle, Whitehaven.
Wigton, Wigton.

DERBYSHIRE.

Alfreton, The sub-district of Alfreton, in Belper, consisting of the parish of Alfreton. The sub-district of Ripley, in Belper, except the township of Henge, consisting of the parishes of South Wingfield, Pentrich, including the chapelry of Ripley, and the parish or township of Crich (see *Belper*). The sub-district of Ashover, in Chesterfield, except the townships of Claylane and Woodthorpe, consisting of the parishes, townships, and hamlets of Ashover, Brackenfield, Higham, Morton, Pilsley, Shirland, Stretton, and Wessington (see *Chesterfield*). The sub-district of Blackwell in Mansfield, consisting of the parishes of Blackwell, Tibshelf, Pinxton, and South Normanton. The parishes of Annesley, with Felley, Kirkby in Ashfield, and Selston, the hamlet of Codnor, and precinct of Codnor-park.
Ashborne, Ashborne, except the sub-district of Brasington (see *Wirksworth*).
Bakewell, Bakewell, including the townships of Birchover and Gratton, but excepting all the rest of the sub-district of Matlock (see *Wirksworth*).
Belper, Belper, including the townships of Duffield, Hazlewood, Heage, Shottle, Turnditch, and Windley, but excepting all the rest of the sub-districts of Alfreton, Duffield, Ripley, and Wirksworth (see *Alfreton*, *Derby*, and *Wirksworth*). The townships of Heanor and Shipley, and hamlet of Loscoe. The parish of Ilkeston.
Chapel-en-le-Frith, Chapel-en-le-Frith. The hamlets of Beard, Ollersett, Whittle, and Thornsett, and chapelry of Disley.
Chesterfield, Chesterfield, including the townships of Woodthorpe and Claylane, but excepting all the rest of the sub-district of Ashover (see *Alfreton*).
Derby, Derby, Shardlow, except the sub-district of Castle Donington, and parish of Breedon, and the parishes of Attenborough, Bramcote, Stapleford (see *Nottingham and Loughborough*). The

sub-district of Repton, in Burton, consisting of the parishes of Dalbury with Lees, Etwell, Foremark, Mickleover, with the chapelry of Finedon, Newton Solney, Radbourne, Repton, Trusley, Willington, the chapelrys of Bretby, Twyford and Stenson, and the hamlet of Ash. The sub-district of Duffield in Belper, except the townships of Duffield, Hazlewood, Turnditch, and Windley, consisting of the parishes of Albestree, Kirklangley, Kedleston, Mackworth, Quarndon, and the townships of Muggington, Ravensdale-park, and Weston-under-Wood (see *Belper*).

Glossop, Hayfield and Glossop, except the chapelry of Disley and hamlets of Beard, Ollersett, Whittle, and Thornsett (see *Chapel-en-le-Frith*).

Wirksworth, The sub-district of Brassington in Ashborne, consisting of the parishes of Bonsall, Carsington, Hognaston, and the townships, hamlets, and chapelrys of Bradborne, Brassington, Callow, Hopton, Ible, Kirk Ireton, and Middleton by Wirksworth. The sub-district of Matlock, in Bakewell, except the townships of Birchover and Gratton, consisting of the parishes of Darley, Matlock, and the townships and chapelrys of Aldwark, Cromford, Elton, Gratton, Tansley, Wensley, and Snitterton, and Winster (see *Bakewell*). The sub-district of Wirksworth in Belper, except the township of Shottle, consisting of the townships, hamlets, and chapelrys of Alderwasley, Ashley Hay, Dethwick Lea, Holloway, Ideridge-hay and Allton, Irton Wood, and Wirksworth (see *Belper*).

DEVONSHIRE.

Arminster, Axminster. The parishes of Catherston Lewston, and Wootton Fitzpaine.
Barnstaple, Barnstaple, except the parishes of Horwood, Instow, and West Leigh (see *Bideford*).
Bideford, Bideford. The parishes of Horwood, Instow, and West Leigh.
Crediton, Crediton.
Exeter, Exeter, St. Thomas.
Holsworthy, Holsworthy, Stratton.
Honiton, Honiton.
Kingsbridge, Kingsbridge.
Newton Abbott, Newton Abbott.
Oakhampton, Oakhampton.
Plymouth, Plymouth, Plympton St. Mary, East Stonehouse, Stoke Damerel, St. Germans, including the Hamoaze and Catwater, and so much of the Sound as is within the body of any county.
South Molton, South Molton, except the parish of Rackenford (see *Tiverton*).
Tavistock, Tavistock.
Tiverton, Tiverton and Dulverton. The parish of Rakenford.
Torrington, Torrington.
Totnes, Totnes.

DORSETSHIRE.

Blandford, Blandford, except the chapelry of Farringdon (see *Shaftesbury*).
Bridport, Bridport, except the parishes of Catherstone Lewston, and Wootton Fitzpaine (see *Arminster*). Beaminster, except the sub-district of Misterton (see *Creckkerne*).
Dorchester, Dorchester and Cerne.
Poole, Poole, except the parish of Canford Magna, as now constituted for Ecclesiastical purposes (see *Wimborne Minster*).
Shaftesbury, Mera, Tisbury, Shaftesbury, Sturminster. The chapelry of Farringdon in the parish of Iwerne Courtney.
Wareham, Wareham and Purbeck.
Weymouth, Weymouth.

Wimborne Minster, Wimborne and Cranborne. The parish of Canford Magna, exclusive of the parishes which have been separated from it for Ecclesiastical purposes.

Barnard Castle, Teesdale.

Bishops Auckland, Auckland.

Darlington, Darlington.

Durham, Chester-le-Street. Durham and Lanchester, except the townships of Benfieldside, Billingside, Buttsfield, Conside and Knitsley, Greencroft, Healyfield, Ivestone, Medomsley, and the chapelries of Ebchester, Muggleswick and Cold Rowley, in the parish of Lanchester (see *Shotley Bridge*). Houghton. Easington, except the parishes of Castle Eden and Monk Hesleton, and the township of Shotton (see *Hartlepool*).

Gateshead, Gateshead.

Hartlepool, The sub-district of Hartlepool, except the parish of Billingham, in Stockton and Sedgfield, consisting of the parishes of Hartlepool, Greatham, Hart, Stranton, and Elwick Hall (see *Stockton*). The parishes of Castle Eden and Monk Hesleton, and township of Shotton.

Shotley Bridge, Parish of Shotley. The chapelry of Whittonstall, in the parish of Bywell St. Peter's. The townships of Benfieldside, Billingside, Buttsfield, Conside and Knitsley, Greencroft, Healyfield, Ivestone, Medomsley, and the chapelries of Ebchester, Muggleswick, and Cold Rowley, in the parish of Lanchester. The parish of Edmondbyers, including the chapelries of Huntonsworth and Ruffside.

South Shields, South Shields.

Stockton-on-Tees, Stockton and Sedgfield, including the parish of Billingham, but excepting all the rest of the sub-district of Hartlepool (see *Hartlepool*).

Sunderland, Sunderland.

Wolsingham, Weardale, except the parish of Edmondbyers, including the chapelries of Huntonsworth and Ruffside (see *Shotley Bridge*).

ESSEX.

Braintree, Braintree.

Brentwood, Ongar. Billericay, except the parishes of Bowersgifford, North and South Benfleet, and Thundersley (see *Rochford*).

Chelmsford, Chelmsford, Witham.

Colchester, Colchester, Lexden, and Winstree. Tendring, including the parish of Manningtree, but excepting the sub-districts of Harwich and Thorpe, and all the rest of the sub-district of Manningtree (see *Harwich*).

Dunmow, Dunmow.

Halstead, Halstead, except the parishes of Ridge-well and Stambourne (see *Havershill*).

Harwich, the sub-districts of Harwich, Thorpe, and Manningtree, except the parish of Manningtree, in Tendring, together consisting of the parishes of St. Nicholas Harwich, Dover Court, Beaumont, Bradfield, Frinton, Great and Little Holland, Kirby, Mistley, Great Oakley, Little Oakley, Ramsey, Tendring, Thorpe-le-Soken, Walton and Wix (see *Colchester*).

Maldon, Maldon.

Rochford, Rochford. The parishes of Bowersgifford, North and South Benfleet, and Thundersley.

Romford, Romford. Orsett, except the parishes of West Thurrock, Gray's Thurrock, Little Thurrock, Chadwell, West Tilbury, East Tilbury, and Mucking (see *GraveSEND*).

Saffron Walden, Linton, Saffron Walden.

Waltham, Epping. The sub-districts of Cheshunt

and Waltham Abbey, in Edmonton, consisting of the parishes of Cheshunt and Waltham Abbey. $\frac{1}{2}$

GLOUCESTERSHIRE.

Bristol, Bristol, Clifton, Bedminster. Keynsham, except the sub-district of Newton (see *Bath*).

Cheltenham, Cheltenham.

Chipping-Sodbury, Chipping Sodbury.

Cirencester, Cirencester.

Dursley, Dursley. The sub-district of Berkeley, in Thornbury, consisting of the parishes of Berkeley, Charfield, Hill, and Tortworth. The parish of Cromhall. The parishes of Kingscote, Newton Bagpath, and Ozleworth.

Gloucester, Gloucester, Wheatenburst. The sub-district of Huntley, in Westbury-on-Severn, except the parish of Westbury, consisting of the parishes of Bulley, Minsterworth, Huntley, Longhope, Blaisdon, and Churcham (see *Newnham*).

Newent, Newent.

Newnham, Westbury-on-Severn, including the parish of Westbury, but excepting all the rest of the sub-district of Huntley (see *Gloucester*.)

Northleach, Northleach.

Stow, Stow-in-the-Wold.

Stroud, Stroud.

Tewkesbury, Tewkesbury.

Thornbury, except the sub-district of Berkeley and parish of Cromhall (see *Dursley*).

Winchcomb, Winchcomb.

HAMPSHIRE.

Andover, Andover, Whitechurch.

Alton, Alton.

Basingstoke, Basingstoke, Hartley Wintney.

Bishop's Waltham, Droxford.

Christchurch, Christchurch.

Fordingbridge, Fordingbridge, Ringwood.

Lymington, Lymington.

Newport, Isle of Wight.

Petersfield, Petersfield, Catherington.

Portsmouth, Alverstoke, Fareham, Havant, Portsea.

Romsey, Romsey, Stockbridge.

Southampton, Southampton, South Stoneham, New Forest.

Winchester, Alresford, Winchester, Hursley.

HEREFORDSHIRE.

Bromyard, Bromyard.

Hereford, Hereford, Weobley, except the parishes of Almeley, Birley, Dilwyn, Eardisland, Stretford, Weobley (see *Kington and Leominster*).

Kington, Presteigne and Kington, except the sub-district of Presteigne (see *Presteigne*). The parish of Almeley.

Ledbury, Ledbury.

Leominster, Leominster. The parishes of Birley, Dilwyn, Eardisland, Stretford, and Weobley.

Ross, Ross.

HERTFORDSHIRE.

Barnet, Barnet. The parish of Hendon.

Bishop Stortford, Bishop Stortford.

Hertford, Hertford, Ware. The sub-district of Welwyn, in Hatfield and Welwyn, consisting of the parishes of Welwyn, Digswell, Ayot Saint Lawrence, and Ayot Saint Peter.

Hitchin, Hitchin.

Royston, Royston and Buntingford.

St. Albans, St. Albans. Hatfield and Welwyn, except the sub-district of Welwyn (see *Hertford*). Hemel Hempstead, except the sub-district of King's Langley (see *Chesham and Watford*).

Watford, Watford. Hendon, except the parishes of Hendon and Willesden, the precinct of Twy-

ford Abbey (see *Barnet and Marylebone*). The parish of King's Langley.

HUNTINGDONSHIRE.

Huntingdon, Huntingdon, St. Ives.
St. Neot's, St. Neot's, except the parishes of Shelton, Dean, Tilbrook, Great Catworth, and Long Stow (see *Thrapstone*).

KENT.

Ashford, West Ashford, East Ashford, except the parishes of Aldington, Bonington, and Hurst (see *Hythe*).

Bromley, Bromley.

Canterbury, Blean Bridge, Canterbury.

Dartford, Dartford.

Deal, Easry.

Dover, Dover.

Faversham, Faversham.

Folkestone, The town and parish of Folkestone, the parishes of Cheriton, Hawkinge, Paddeworth, Swingfield, and Acrise.

Gravesend, Gravesend. The sub-district of Northfleet, in North Aylesford, consisting of the parishes of Chalk, Cobham, Denton, Ifield, Luddesdown, Meopham, Northfleet, Nursted, and Shorne. The parishes of West Thurrock, Gray's Thurrock, Little Thurrock, Chadwell, West Tilbury, East Tilbury, and Muckinge, in Orsett.

Greenwich, Lewisham, Greenwich, except so much as lies west of the Croydon Railway (see *Lambeth*).

Hythe, Elham, except the town and parish of Folkestone, and parishes of Cheriton, Hawkinge, Paddeworth, Swingfield, and Acrise (see *Folkestone*). The parishes of West Hythe, Hurst, Bonington, and Aldington.

Maidstone, Hollingbourne, Maidstone. Malling, except the parishes of Burham, Ightham, Shipborne, Wouldham, and Wrotham (see *Rochester and Seven Oaks*).

Margate, The parishes of Saint John the Baptist, Saint Peter the Apostle, and Birchington, and the vill of Wood.

Ramsgate, Thanet, except the parishes of St. John the Baptist, St. Peter the Apostle, and Birchington, and the vill of Wood (see *Margate*).

Rochester, Medway, Hoo. North Aylesford, except the sub-district of Northfleet (see *Gravesend*). The parishes of Burham, Wouldham, Hartlip, Rainham, and Upchurch.

Romney, Romney Marsh, except the parish of West Hythe (see *Hythe*).

Seven Oaks, Seven Oaks, except the sub-district of Penshurst (see *Tonbridge*). The parishes of Ightham, Shipborne, and Wrotham.

Sheerness, Sheppey.

Sittingbourne, Milton, except the parishes of Hartlip, Rainham, and Upchurch (see *Rochester*).

Tenterden, Cranbrook, Tenterden.

Tonbridge, The sub-district of Penshurst, in Seven Oaks, consisting of the parishes of Chiddingstone, Cowden, Edenbridge, Hever, Leigh, and Penshurst. The parishes of Capel, Tudeley, and Hadlow, and so much of the parishes of Bidborough and Tonbridge as lies north of a line drawn from the point where the eastern boundary of the parish of Penshurst crosses the Bidborough turnpike road, along the said road to Bound Corner, thence toward Tonbridge, along the Tonbridge Road, to a lane leading by St. Thomas's Farm, to the Hastings Road, thence along the Hastings Road to Fairthorne, thence along the lane leading to Pellet Gate, till it crosses the boundary of Pembury parish.

Tonbridge Wells, The parishes of Ashurst, Brench-

ley, Horsemonden, Pembury, Speldhurst. So much of the parishes of Bidborough and Tonbridge as is not in the district of the court holden at Tonbridge. Ticehurst. The parishes of Mayfield and Rotherfield.

LANCASHIRE.

Ashton-under-Lyne, Ashton-under-Lyne and Oldham, except the sub-districts of Denton and Haughton, Newton and Godley, Mottram, Oldham above Town, Oldham below Town, Middleton, Royton, Chadderton, and Crompton (see *Hyde and Oldham*).

Blackburn, Blackburn.

Bolton, Bolton.

Burnley, Burnley, except the sub-districts of Colne and Pendle (see *Colne*).

Bury, Bury.

Chorley, Chorley.

Clitheroe, Clitheroe.

Colne, The sub-districts of Colne and Pendle, in Burnley, consisting of the townships of Colne, Trawden, Great Marsden, Little Marsden, Foulridge, Barrowford, Goldshaw, Barley with Wheatley, Old Laund, Rough Lea, and Wheatley Carr, in the parish of Whalley.

Poulton, The parishes of Poulton le Fylde and Bispham, and chapelry of Singleton, in the parish of Kirkham. The chapelry of Hambleton in the parish of Kirkham. The township of Pree-sall with Hackensall, and chapelry of Stalmire with Staynal, in the parish of Lancaster.

Garstang, Garstang, except the townships of Pree-sall with Hackensall, and chapelries of Hambleton and Stalmire with Staynal (see *Poulton*).

Hastlingden, Haslingden.

Kirkham, Fylde, except the parishes of Poulton le Fylde and Bispham, and chapelry of Singleton (see *Poulton*).

Lancaster, Lancaster, except the chapelry of Arkholme with Cawood, the townships of Melling with Wrayton and Wennington, and the parish of Whittington (see *Kirkby Lonsdale*).

Leigh, Leigh.

Liverpool, Liverpool, West Derby.

Manchester, Manchester, Chorlton.

Oldham, The sub-districts of Oldham above Town, Oldham below Town, Middleton, Royton, Chadderton, and Crompton, in Ashton and Oldham, together consisting of the townships of Oldham, Alkrington, Royton, Tonge, Chadderton, and Crompton, in the parish of Prestwich-cum-Oldham; and the townships of Middleton and Thornham, in the parish of Middleton.

Ormskirk, Ormskirk.

Preston, Preston.

Rochdale, Rochdale.

Saint Helen's, Prescott.

Salford, Salford, Worsley.

Ulverstone, Ulverstone, except the sub-district of Hawkshead, (see *Ambleside*).

Warrington, Warrington. The sub-districts of Grappenhall and Great Budworth, in Runcorn, except the township of Great Budworth; consisting of the townships of Acton Grange, Daresbury, Hatton, Kekewich, Moore, Newton, Preston, Walton Superior and Inferior, in the parish of Runcorn; and the townships of Antrobus, Appleton and Hull, Bartington, Crowley, Dutton, Seven Oaks, Stretton, Whitley Inferior and Superior, in the parish of Great Budworth (see *Northwich*). The parish of Lymm.

Wigan, Wigan.

LEICESTERSHIRE.

Ashby-de-la-Zouch, Ashby-de-la-Zouch.

Hinckley, Hinckley. The parish of Wolvey.

Leicester, Barrow-upon-Soar, including the parish of Swithland and precinct of Ulverscroft, but excepting the rest of the sub-district of Quorndon, and excepting also the parishes of Barrow-upon-Soar, Seagrave, Sileby, and Walton-on-the-Wolds (see *Loughborough*). Blaby, Leicester. Billesden, except the parishes of Alexton, Tugby, Loddington, Skeffington, Owston, and Withcote, and the parochial chapelry of East Norton, the chapelry of Goadby, in the parish of Billesden, and the hamlet of Whatborough, in the parish of Tilton (see *Oakham and Uppingham*).

Loughborough, Loughborough. The parishes of Barrow-upon-Soar, Seagrave, Sileby, and Walton-on-the-Wolds; the sub-district of Quorndon, in Barrow-upon-Soar, except the parish of Swithland and precinct of Ulverscroft, consisting of the chapelries of Quorndon, Mount Sorrel North and South, Woodhouse, including Mapplewell, Woodhouse Eaves, and Beaumanor (see *Leicester*). The sub-district of Castle Donington in Shardlow, consisting of the parishes of Castle Donington, Kegworth, Ratcliffe, Kingston, Lockington, and Diseworth, and chapelry of Isley Walton. The parish of Breedon.

Lutterworth, Lutterworth.

Market Bosworth, Market Bosworth.

Market Harborough, Market Harborough.

Melton Mowbray, Melton Mowbray.

[To be concluded in our next No.]

OPENING OF THE SMALL DEBTS COURTS.

MIDDLESEX.

THE following County Courts of Middlesex, established under the act 9 & 10 Vict. c. 95, for the recovery of small debts and demands, have been opened, and the officers appointed:—

On the 15th, the Shoreditch and Bow County Court, by Henry Storke, Esq., Sergeant-at-Law.

On the 16th, the Clerkenwell County Court, by Thomas Starkie, Esq., Q. C.; at Duncan Terrace, in the parish of St. Mary's, City Road, Islington.

WEST KENT.

In the West Kent circuit, James Espinasse, Esq., on Monday and Tuesday last opened the courts and appointed the undermentioned days for the commencement of business:—

Maidstone, April . . . 5	Dartford, April . . . 13
Sheerness 7	Seven Oaks . . . 15
Rochester 8	Tunbridge . . . 16
Gravesend 10	Tunbridge Wells 17

SECOND REPORT OF THE INCLOSURE COMMISSIONERS.

THE following is the Second Report under the Inclosure Commission, dated the 30th January, and signed by Lord Morpeth, Mr. Blamire, and Mr. Darby, addressed to the Secretary of State for the Home Department.

"We have the honour to forward to you, as one of her Majesty's principal Secretaries of State, pursuant to the provisions of the act passed in the 8 & 9 Vict. c. 113, a general report of our proceedings, specifying such matters as are therein directed; which report contains a schedule as a form most easy of reference, by which will be seen the time each inclosure proceeding has occupied in its several stages, which has necessarily varied according to the circumstances of the different cases.

"In addition to the two classes of cases in our schedule of last year we have added two other classes: 1st, the cases which have already received the sanction of parliament, and those authorised by the commissioners when they presented their last annual general report, with the proceedings which have since taken place; and, 2ndly, those not requiring the previous authority of parliament, authorised by the commissioners since the presentation of such report.

"The number of applications of all kinds to this office since the passing of the act has been 150.

"Of these, 132 are for inclosure, one for the conversion of stinted into regulated pasture, 10 for the exchange of lands, four to complete proceedings under local acts, and three for setting out copyhold boundaries under the Inclosures Amendment Act.

"The number of acres, comprised in the applications for inclosure and conversion, is 105,381A. 2R. 26P.

"The number of cases since the last annual general report, is 104.

"Of these, 90 have been for inclosures, of which 57 will, we believe, require the previous authority of parliament, and 33 will not. There are nine for the exchange of lands, and two to complete proceedings under local acts.

"One inclosure application was not entertained by the commissioners, as the application was made with a view of vesting allotments in the corporation for the improvement of the town of Cardigan, which the commissioners conceived was not legal. An application to complete proceedings under the Kidwelly Inclosure Act has been stopped by notice of the dissent of one-fourth having been given to the commissioners. The quantity of land comprised in the applications for inclosure since the last annual general report, is 77,150A. 1R. 4P.

"Our report of any opinion, as to the expediency or inexpediency of any inclosure, is necessarily confined to those cases with respect to which the proper assents have been given to the provisional order. We have, in the schedule, given precedence to those cases which have already received the sanction of parliament, and followed with those authorised by the commissioners; next are taken the cases which it is confidently expected will require the previous authority of parliament; and lastly, those which do not require such authority.

"In addition to the general statement in the schedule, we proceed now to report specially

on these cases requiring the previous authority of parliament, to which the proper assents to the provisional orders have been given; the special grounds on which we think such inclosures expedient; and, in those cases where no allotments are made for exercise and recreation or for the labouring poor, the grounds on which we have abstained from requiring such appropriation.

"No. 1, *Welland, county Worcester*.—An application has been made for the inclosure of Welland Common, containing 783A. 3R. 19P. waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that the whole land is susceptible of the greatest improvements, and that not only those interested but the whole neighbourhood will derive very great advantage from it.

"No. 2, *Harden Moor, county York*.—Also for the inclosure of Harden Moor, containing 847A. 1R. 24P., waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that the land, which in its present state produces little, but is capable of great improvement, will, when inclosed, afford much employment to an overgrown population now in want of it, and that liberal allotments are made for exercise and recreation, and for the labouring poor where much wanted.

"No. 3, *Newbold-on-Stour, county Worcester*.—Also for the inclosure of Newbold-on-Stour Common Field and Waste Lands, containing 979A. 0R. 17P., part of which is waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that the land is capable of being efficiently drained, which it is much in need of, and will be doubled in value when inclosed and properly treated.

"No. 4, *Wilburton Open Fields, county Cambridge*.—Also for the inclosure of Wilburton Open Fields and Common Land, containing 779A. 0R. 22P., part of which is waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that a considerable portion of the land, which is of the best description, but requires drainage, may be very greatly improved; that open field lands which cannot be cultivated with advantage as held at present, in consequence of the divisions of the property and the nature of the common rights, may, after inclosure, be made the most of by the respective owners.

"No. 5, *Elmton, county Derby*.—Also for the inclosure of Elmton Common, containing, by estimation, 210 acres, waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that the land, which is now in a miserable state, and the rights of common of little value, may be greatly improved, and all those having rights of common benefited.

"No. 6, *East Coswood, county Northumberland*.—Also for the inclosure of East Coswood Common, containing 1,561A. 3R. 25P., waste land of a manor.

"In this case no allotments have been made, either for exercise and recreation or for the labouring poor, inasmuch as the land, both from its locality as regards the dwellings of the poor, and from its elevation, is useless for the purpose.

"We consider this proposed inclosure expedient, on the ground that the land may, by proper treatment and drainage, be made valuable for cattle and sheep; that there is abundant supply of stone on the spot for fences; and that it will afford great additional employment of labour.

"No. 7, *Dippenhall, county Southampton*.—Also for the inclosure of Doors Green, Dippenhall Riding, and Warren Corner Heath, containing 83A. 0R. 21P., waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that part of the common is good land and capable of great improvement, that the remainder may be improved, and that it will put an end to disputes which arise from time to time.

"No. 8, *Evenjobb Hill, county Raenor*.—Also for the inclosure of Evenjobb Hill, containing 327 acres, waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that the land will be much improved, the litigation which has existed from the rights not having been understood, satisfactorily put an end to, and that the labouring poor will immediately avail themselves of the allotments required for them.

"No. 9, *Wentnor, county Salop*.—Also for the inclosure of the Wentnor, part of Prolly Moor, and Longmynd, containing 413A. 1R. 7P., waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that the land will be greatly improved, lead to an increased application of labour and capital, and put an end to disputes which are constantly arising from the intercommoning.

"No. 10, *Buckland St. Mary, county Somerset*.—Also for the inclosure of Buckland Hill Coal Furzes, Castle Plain, Little Hill, and Road Common, containing 214A. 2R. 32P., waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that it will be of great advantage to those having common rights, who derive little benefit now from them, while the land is capable of much improvement, affording great facility for drainage, and thus prevent the further deterioration of it by the improper carrying away of the soil.

"No. 11, *Brough and Shatton, county Derby*.—Also for the inclosure of Brough and Shatton Common, containing 529A. 2R. 31P., waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that the land is capable of great improvement by drainage and cultivation, and that the increased employment of labour will be advantageous to the neighbourhood.

"No. 12, *Whitrigg Marsh, county Cumberland*.—Also for the inclosure of Whitrigg

Marsh, containing 272A. 2R., on which rights may be exercised at all times of the year, &c.

"We have not required allotments in this case, either for exercise and recreation, or for the labouring poor, in consequence of the peculiar nature of the rights, as though they may be exercised at all times of the year, the soil is absolutely vested in proportions in the common right owners.

"The application respecting this land has been made with a view to convert the same into regulated pasture, and to the improvement of it when such conversion shall have taken place. And on these grounds, we consider it expedient that this case should receive the sanction of parliament.

"No. 13, *Norbury Hill, county Salop.*—Also for the inclosure of Norbury Hill, containing 318 acres, waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that the soil is of a very good quality, well adapted for the growth of corn, that it will lead to considerable application of capital and labour, and great increase of production.

"No. 14, *Wishaw Upper and Lower Greens, county Warwick.*—Also for the inclosure of Wishaw Upper and Lower Greens, containing 15A. 2R. 39P., waste land of a manor.

"No allotment has been required for the labouring poor, the common being so small, and the poor being already well provided with gardens. We consider this proposed inclosure expedient, on the ground that the land is capable of great improvement.

"No. 15, *Bordley Intack, county York.*—Also for the inclosure of Bordley Intack, containing 127A. 1R., on which rights may be exercised at all times of the year, &c.

"The population being only 40 persons, and the common at too great a distance, either for exercise and recreation, or the labouring poor, allotments have not been required for these purposes.

"We consider this proposed inclosure expedient, on the ground that by a moderate outlay in drainage and proper cultivation, the value will be increased four-fold.

"No. 16, *Netteswell, county Essex.*—Also for the inclosure of Netteswell and Copsall Commons, and arable common fields, containing 207A. 3R. 11P., part of which is waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that the common rights are at present of little value, and that even in some instances parties forego the exercise of them; while the whole of the waste land is fit for arable purposes, and that it will confer great benefit on those interested and on the neighbourhood.

"No. 17, *East Cotham, county York.*—Also for the inclosure of East Cotham Common, containing 123A. 3R. 14P., waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that in consequence of a railroad being made, a much greater accom-

modation is required for those who resort to Red Car for sea-bathing, from Durham and the North Riding of York; and the land being barren, is of greater value for building than any other purpose.

"No allotments have been required for exercise and recreation, or for the labouring poor; first, because the land is not adapted for the purpose, and secondly, from the nature of the rights it was not considered as coming within the equity of the 30th and 31st clauses of the Inclosure Act.

No. 18, *Whitnash, county Warwick.*—Also for the inclosure of Whitnash Common and open fields, containing 1,096A. OR. 29P., of which 60 acres only, including roads, are waste land of a manor.

No allotment for exercise and recreation has been required, for no part of the waste is fit, as to site or extent, for the purpose, as it consists of narrow strips of land.

"We consider this proposed inclosure expedient, on the ground that the land is in a wretched state of cultivation from the manner in which the open fields are occupied, preventing improved cultivation and drainage; and because the waste is of little value in its present state, and the whole capable of being rendered of much greater value when inclosed.

"No. 19, *Washington Commons, county Sussex.*—Also for the inclosure of Washington Commons, containing 283A. 2R. 23P., waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that that which is of little value to the parties interested, may, by drainage and cultivation, be rendered of great value.

"The allotments for the labouring poor were not insisted on in this case, as the land nearest their habitations has been allotted for exercise and recreation, and they have good gardens at present, while the land adjoins that of those who will be entitled to allotments; but subsequent arrangements have been made that two acres shall be allotted for that purpose.

"No. 20, *Goldington, county Bedford.*—Also for the inclosure of common and other lands in the parish of Goldington, containing 1,092A. 3R. 13P., of which part is waste land of a manor.

"We consider this proposed inclosure expedient, on the ground that the land is of excellent quality, and fit for cultivation, which, as to the common fields, is obstructed, from the land of the part owners lying in strips in various places, and which cannot be beneficially occupied, as only a course of agriculture can be adopted which will allow the commonable cattle access to the ground at certain periods; that the waste land may be greatly improved; while the whole, if well allotted, will afford each of those who have rights land lying together, with the opportunity of securing to themselves an abundant production by a proper course of cultivation.

"No. 21, *Tadley, county Southampton.*—Also for the inclosure of Tadley Common and

West Heath Common, containing 699A. 3R. 14P, waste land of the manor.

"We consider this proposed inclosure expedient, on the ground that it will bring into cultivation a large tract of valuable land, and materially improve the condition of the labouring poor in the neighbourhood.

"We have authorised since the last annual general report, 22 cases, which do not require the previous authority of parliament, the particulars of which will be found in the second schedule.

"The present report and schedules will afford the best criterion how far the expectations entertained by the legislature on passing the act have been fulfilled, and how far we were justified in the conviction we expressed in our former report, that the country would generally avail itself of the provisions of the act. We are enabled to express a decided opinion, that the amendments contained in the act of the 9 & 10 Vict. c. 70, have been generally of the greatest use, and, as far as we can judge, given universal satisfaction. Although the power to set out the boundaries of copyholds, and the further facility given to exchanges, by bringing them within such powers, have not led to so many applications as may have been anticipated, we have sufficient reasons for believing that the value of these amendments is fully appreciated, and that advantage will be taken of them. We have great gratification in stating that the spirit in which we have been met generally in every part of the country has been such as greatly to assist us in the performance of our duties.

"We have had communications, desiring that our power should be extended as to several matters; but whilst we are most anxious that the commission should be of the utmost use to the country, we feel that it is far better, even should such extension of powers, or any of them, be desirable, that those who seek for it should so direct their applications that it may be given to us rather than that we should be the parties to recommend it; and that any suggestions we might have to make should be confined to remedies for any practical difficulty we might from experience find to exist, in usefully exercising those powers with which the legislature has thought right to invest us.

"The average expense of the inclosure proceedings, as far as this office is concerned, up to the time of the assents to the provisional order, including any expense which may have attended those assents, and which leaves the case ready for parliament to deal with, or for us to signify our intention of authorizing the inclosure, is 20*l.* 5*s.*"

ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

Courts of Common Law. LAW OF ARBITRATION. ABSENCE OF PARTIES.

1. Unprofessional arbitrators, appointed by

an agreement of reference, ascertained, at a meeting, the balance due from *A.*, one of the litigant parties, to *B.*, the other, except a few pounds, which the arbitrators proposed to make payable by *A.* to *B.*, on account of interest owing by *A.* to a third person, *R.*, on a mortgage of land, the property of *A.*, which *A.* was to assign to *B.* By arrangement between themselves, the arbitrators, without holding any further meeting, questioned *B.* separately, and in the absence of the parties, as to the amount of interest due; each then stated the result of his inquiry to the other, and the reports agreeing, they made their award. The court set the award aside on motion, as procured by "undue means," contrary to 9 & 10 W. 3, c. 16, s. 2, the course pursued being inconsistent with natural justice.

An agreement of reference contained a clause for making such agreement a rule of court. The award being published, and a motion about to be made for setting it aside, the party interested in opposing such motion refused to produce the agreement for the purpose of its being made a rule. The court, on motion in the term next after the making of the award, permitted a copy of the agreement to be made a rule of court, and granted thereupon a rule *nisi* for setting the award aside. *Plews and Middleton, in re*, 6 Q. B. 845.

Case cited in the judgment: *Morgan v. Mather*, 2 Ves. jun., 18.

2. When an arbitrator questions a witness, and receives statements from him in the absence, and without the consent of one party to the reference, the court will set the award aside, without taking into consideration the nature of the statements or the probability of their having influenced the decision.

G. indicted *D.* for a nuisance, committed by erecting a fixed pier in the bed of the Thames. *D.* brought an action against *G.* for disturbing his right of water-way near the same place, by placing barges, &c., which formed a floating pier. Both cases were referred to an arbitrator. After hearing and dismissing the parties, the arbitrator sent for a deputy water-bailiff, who had been examined on the reference, and questioned him as to the means of giving convenient access to the shore, supposing the fixed pier to be removed. Neither party to the reference appeared at or had notice of the meeting; a special pleader, who had been employed on the reference as advocate, was present, but not professionally. The party who afterwards complained of this proceeding had notice of it four days before the arbitrator made his award, but did not remonstrate.

By his award on the indictment, the arbitrator directed a verdict of guilty to be entered, and the fixed pier to be removed; by his award in the action, he ordered a verdict to be entered for the defendants on the issue upon *not guilty*, and on certain other issues, and for the plaintiffs on the residue, and directed, that when the fixed pier should have been removed as ordered by the other award, the defendants should

place their barges according to certain specified regulations.

Held, that by reason of the irregularity, no part of the award in either case could stand.

And, on motion to set the awards aside, that the omission to remonstrate after knowledge of the irregularity, and before making the awards, was no answer. *Dobson v. Groves, Reg. v. Dobson*, 6 Q. B. 637.

Cases cited in the judgment: *Walker v. Frobisher*, 6 Ves. 70; *Atkinson v. Abraham*, 1 B. & P. 175.

AWARD.

1. *Uncertainty*.—Action on the cause. The first count was for selling manure, falsely and fraudulently representing it to be guano; alleging as special damage not only the injury to plaintiff's own lands and crops, but that he had been obliged to pay to several parties named, to whom he re-sold it, compensation for the injury caused to their lands and crops. There was a second count similar to the first, upon another sale of another parcel of the manure. Before plea pleaded, a judge's order was obtained, referring "all matters in difference between the parties in the cause" to an arbitrator; the costs of the action to abide the event of the award, and the costs of the reference and award to be in the discretion of the arbitrator. It appeared that at the inquiry before the arbitrator, a witness who had purchased or used some of the guano, was tendered on behalf of the plaintiff, to prove the special damage alleged in the declaration, but was objected to on the ground that he was not named in the declaration, and that his evidence was accordingly not received. The arbitrator, by his award, which was not expressed to be *de premissis*, ordered the defendant to pay to the plaintiff a certain sum of money, and that the costs of the reference and award should be paid by the defendant: *Held*, that the award was bad, for not showing whether the money was paid in respect of the action, or of any other matter in difference between the parties. *Crosbie v. Holmes*, 3 D. & L. 566.

Case cited in the judgment: *Gray v. Gwennap*, 1 B. & A. 186.

2. *Uncertainty*.—An award in an action where several issues are joined, and the costs are to abide the event of the award, ought to contain a distinct finding on each issue. For want of such finding the award will be bad for uncertainty, unless (*semble per Lord Denman, C. J.*) it be clear on the face of the award, that the arbitrator has in effect found on every issue.

Where an action for polluting the water of a water-course was referred to an arbitrator, with power to him to regulate the enjoyment of the water: *Held*, that an award directing a verdict to be entered for plaintiff, and that defendant should at all times take *all proper and reasonable precautions* for preventing the water from being rendered unfit for plaintiff's use, and, in particular, should use a process of filtering mentioned in the award, was bad for uncertainty.

The direction as to the particular process was, that the water passing from defendant's to plaintiff's premises should be passed through filtering lodges made, or to be made, by defendant, so as to be purified and cleansed for plaintiff's use, "so far as the same can be purified and cleansed by the ordinary and most approved process of filtering, as aforesaid."

Held, that the description, by reference only to the "ordinary and most approved process," was uncertain, and the award bad in this respect also. *Stonehewer v. Farrar*, 6 Q. B. 730.

See *Reconsideration of Award; Setting Aside*.

CERTIFICATE.

Assumpsit.—The declaration contained counts for goods sold and delivered, for money had and received, and for money due on an account stated. The defendant pleaded—1. Except, &c., non assumpsit. 2. As to the sum excepted, tender. 3. Except, &c., set off. 4. Except, &c., payment. On these pleas issue was joined. At the trial, a verdict was taken by consent for the plaintiff, subject to the certificate of an arbitrator, who made his certificate in the following terms:—"As to the issues firstly, thirdly, and lastly, joined between the parties in the said cause, I do find and certify that the verdict so found as aforesaid ought to stand, and that the same shall and do stand upon and so far as the same relates to the said 1st, 3rd, and last issues:" *Held*, on motion to set aside the above certificate, that the "issue firstly joined" must be the issue of *non assumpsit* to the whole declaration; and that it was not necessary to find separately on the issue of *non assumpsit* as to each count. *Adam v. Rowe*, 3 D. & L. 331.

Cases cited in the judgment: *Kilburn v. Kilburn*, 2 D. & L. 633; 13 M. & W. 671; *Morgan v. Thomas*, 9 Jurist, 92.

COSTS OF SPECIAL JURY.

Construction of agreement for change of venue.—An arbitrator to whom a cause is referred, with all the powers of a judge *ad nisi prius*, cannot give a certificate for the costs of a special jury, after he has made and published his award, without providing for them therein.

A special jury cause, of which the venue was in Middlesex, not having come on for trial at the sittings for which it was set down, the parties signed a consent that the record should be altered by changing the venue to London, and consented thereby to all the necessary alterations consequent on such change of venue being made in the record, and that jury process should be issued, &c., as if the cause had been regularly set down for the sittings in London; and that the rule for a special jury should be amended by directing it to the sheriffs of London, and a special jury should be thereupon summoned by the sheriffs of London; and that all the costs of and occasioned by that arrangement should be costs in the cause, and abide the event. The cause came on for trial at the sittings in London, and was then referred to an arbitrator, who decided it in favour of the

defendant: *Held*, that, under the above agreement, the defendant was entitled to the costs of the special jury summoned by him in London, as costs in the cause, without any certificate for a special jury. *Geeves v. Gorton*, 15 M. & W. 186.

And see *Infant*.

INFANT.

1. *Costs*.—An action on an apprentice deed was referred to arbitration by order of *nisi prius*, together with two others, in one of which the infant apprentice sued by his next friend, the costs of the causes to abide the event, and the costs of the reference and award to be in the discretion of the arbitrator. The arbitrator awarded that the verdict in the above cause should be entered for the defendant, that the two other actions should be no further prosecuted, and that the infant should pay the costs of the reference and award. *Held*, that the award was not bad by reason of its directing an infant to pay costs. *Proudfoot v. Poile*, 3 D. & L. 524.

2. Three causes were referred to arbitration, in one of which the infant was sued by his next friend; the other two being actions in which he was the substantial, though not the nominal plaintiff. The costs of the causes were to abide the event, and the costs of the reference and award were to be in the discretion of the arbitrator. The arbitrator decided all the causes in favour of the defendant, and ordered that the infant should pay all costs of the reference and award: *Held*, that this was no excess of authority. *Proudfoot v. Boyle*, 15 M. & W. 198.

JUDGMENT IN VACATION.

When a verdict is taken at *nisi prius* by consent, subject to the certificate of an arbitrator, the certificate, when given, relates back to the time of the verdict; therefore, when such certificate was given in vacation, and several months after the return-day of the *distringas*: *Held*, that the successful party might sign judgment immediately, and was not bound to wait until after the first four days of the ensuing Term. *Cremer v. Chuck*, 3 D. & L. 672, S. C. 15 M. & W. 310.

NOTES OF ARBITRATOR.

On a motion to set aside an award, the court will not look at the notes of the arbitrator. *Doe d. Huxby v. Preston*, 3 D. & L. 768.

PARTNERSHIP.

A number of coach proprietors, who horsed a coach, were in the habit of having monthly accounts made out, containing the names of proprietors, the amount of the receipts and disbursements, the number of miles worked by each, and the proportion of the earnings to which each was entitled. These accounts were made out by the clerk of one of the proprietors, partly from materials furnished by them, and partly from the way-bills; and the practice was, for the clerk to send each proprietor a copy of the monthly account, showing the amount which each had to receive or pay, and the proprietor or proprietors from or to whom

he was to receive or pay such amount: *Held*, that this account was not an award, and was admissible in evidence without a stamp. *Good-year v. Simpson*, 15 M. & W. 16.

RECONSIDERATION OF AWARD.

Where an order of reference has a clause empowering the court, if the award be disputed, to remit the matters for the reconsideration of the arbitrator, and the case is so remitted, the arbitrator must hear fresh evidence, if tendered, as on the original reference. *Quære*, whether, under such a clause, the court may remit the case for reconsideration a second time. But, where the case has been so remitted, and the arbitrator had declined to hear more evidence, but amended his award, deciding in favour of the same party as before, and, on motion to set aside such further award, the other party opposed a further reference to the same arbitrator, the court set the award aside. *Nickalls v. Warren*, 6 Q. B. 615.

SETTING ASIDE AWARD.

Where a verdict is taken at *nisi prius* for a nominal sum, the cause only being referred to the award of an arbitrator, the motion to set aside the award should be made within the four days limited for a motion for a new trial. *Riccard v. Kingdon*, 3 D. & L. 773; *Paxton v. Great North of England Railway Company*, 3 D. & L. 773.

SPECIAL CASE.

Defendant's death.—Where a cause was referred to a barrister to state a special case, and the case was stated after the death of the defendant, the court refused to set it aside. *James v. Crane*, 3 D. & L. 661.

SPECIAL JURY.

See *Costs of Special Jury*.

UMPIRE.

By a judge's order, a cause was referred to A., B., and C., the award to be made by them or any two of them, and it was provided that the arbitrators, or any two of them, should, as to certain work, adopt the opinion or decision of C., and, as to certain other work, the opinion or decision of A. and B., or in case A. and B. should differ in opinion, then that the arbitrators, or such two of them as should make an award, should adopt the opinion or decision, as to such last-mentioned work, of an umpire to be nominated by A. and B. before proceeding with the reference. A. and B. appointed an umpire, and afterwards made an award, in which they recited that they had heard and duly considered the allegations and evidence of the parties, and had considered the decision of the said umpire. There had, in fact, been no difference of opinion on the part of A. and B., and no opinion or decision had been required of, or given by, the umpire. *Held*, that the introduction of these words did not vitiate the award. *Harlow v. Read*, 1 C. B. 733.

UNCERTAINTY.

See *Award*.

VACATION.

See *Judgment*.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Morris v. Morris. Jan. 28 & 29, 1847.

PASSING PUBLICATION IN AID OF A FOREIGN COURT.

This court will order publication in a suit to perpetuate testimony to pass in aid of a similar suit in the court of Ireland.

A BILL to perpetuate testimony had been filed in the Irish Court of Chancery, in which publication had duly passed. A similar bill had also been filed in this court against the defendant, resident in England, in which publication had not passed, but the witness whose depositions were required was dead. The objects of the above suits appear in the report of this case *ante*, p. 139.

Mr. Rogers, for the defendant, stated, that this was a motion to dismiss Vice-Chancellor Knight Bruce's order that publication should pass in the English suit, with a view to use the depositions in evidence before the Irish Court of Chancery. The learned counsel contended there was no authority that this court had ever made an order to pass publication in aid of a suit in another country, nor in aid of a court which has the power *per se* of enforcing its jurisdiction, and he cited Mitford on Pleadings, (3rd ed.) p. 151, n. a; *Dunn v. Coates*, 1 Atk. 288; *Bent v. Young*, 9 Sim. 180, and *Crowe v. Del Rio*, there stated in a note, p. 185; *Attorney-General v. Ray*, 2 Hare, 518. It was, moreover, uncertain whether the court in Ireland would use these depositions.

Mr. E. F. Smith, contra, submitted that the time for publication in the Irish suit had now arrived, and mentioned the cases of *Morrison v. Arnold*, 19 Ves. 671; *Harris v. Cotterell*, 3 Mer. 678; *Barnsdale v. Lowe*, (and the cases there cited), 2 Russ. & Myl. 142; which show that such an order as that complained of will not pass unless a litigation be existing; and he further cited *Attorney-General v. Ray*, (*supra*), which was subsequently mentioned to the court, as appears in 3 Hare, 335; *Hennell v. Lyon*, 1 B. & Ald. 182; *Earl of Abergavenny v. Powell*, 1 Mer. 434; and *Houlditch v. Donegal*, cited in 1 Mol. 366.

Mr. Rogers in reply urged, that the courts would not proceed upon copies of the depositions, but upon the record itself; and that, although copies were certainly permitted to be previously given for the convenience of parties, it was quite clear from the case of *Attorney-General v. Ray*, that the officer was by the first order desired to attend with the record.

The Lord Chancellor remarked that the question was of material importance, and very bare of authorities; and on the following morning said, he did not find that the cases quoted were any authority for not allowing publication to pass; the expectancy having arrived; the witness being dead; and the event having hap-

pened against which it was intended to guard. The only difficulty was the circumstance of the depositions being required for the court in Ireland, which in this respect must be considered as a foreign court. The case of *Crowe v. Del Rio* was not applicable, as it related to a bill of discovery, a very different matter from the present. With respect to the use of the depositions by the court in Ireland, that must be determined by the court itself. The order of the Vice-Chancellor was right, and this motion must be refused with costs.

Vice-Chancellor of England.

Osborne v. The Birmingham, Wolverhampton, and Stour Valley Railway Company.

INJUNCTION.—AFFIDAVIT.

The court will not grant an injunction ex parte to restrain the execution of the works of a projected railway after they have been commenced for several weeks, unless the affidavit in support of the application is clear and specific in its statement of the grounds of complaint, and shows no unnecessary delay.

THE plaintiff was the owner of certain premises required by the Birmingham, Wolverhampton, and Stour Valley Railway Company, for the completion of their works, and they had given notice of the premises being required, but no final agreement had been made respecting them. The company, however, commenced operations in December last, and had been since employed in forming a tunnel under a hill upon which the plaintiff's premises stood. Part of these operations consisted in blasting portions of the hill, and the explosion for this purpose so shook the plaintiff's premises that a portion of them fell down on Saturday last, and there was great danger of the whole being knocked down. The affidavit in support of the present application stated these facts, but merely stated generally that works were commenced about December last, and that the explosions took place during the last fortnight.

Mr. Bethell and Mr. Prior moved *ex parte* for an injunction to restrain the further prosecution of the works complained of.

The Vice-Chancellor said, he thought the affidavit did not enter sufficiently in detail to warrant the application for an injunction *ex parte*. The statement that the works commenced about December, and that the explosions took place during the last fortnight was too general, and notice of the application must therefore be given to the defendants.

Johnson v. Tucker. Feb. 2nd, 1847.

PRODUCTION OF DOCUMENTS.—PARTIES.—CONSTRUCTION OF ORDER 23 OF AUGUST, 1841.

In a suit by some of several cestui que trusts for an account and conveyance to a new trustee, it is sufficient to serve the other

cestui que trusts with a copy of the bill; and a motion for production will not be refused on the ground of their not being substantial parties.

THIS was a motion for production of documents admitted by the answer of the defendants to be in their possession, and it was resisted on the ground that certain necessary parties were not before the court. The bill was filed by some of several *cestui que trusts* against the representatives of deceased trustees for an account, and against the heir of the surviving trustee for a conveyance of the trust property, the remaining *cestui que trusts* having been served with a copy of the bill, and the plaintiffs praying that the parties so served might be bound by the proceedings in the suit.

Mr. James Parker and Mr. Glasse, in support of the motion, cited *Davis v. Davis*, 4 Hare, 389; *Lloyd v. Lloyd*, 1 Yo. & Col. C. C. 181.

Mr. Stuart and Mr. Rogers *contra*, urged that the interests of all the trustees were so materially concerned in the objects of the suit that the case was not within the 23rd Order.

The Vice-Chancellor said, that where a party was to receive a benefit from a suit, it could not be said that any direct relief was sought against him, and his Honour thought this was a case falling within the 23rd Order, the true meaning of which was, that it should be applicable to such a case as the present, because no account, payment, conveyance, or other direct relief was sought. All that was asked was a conveyance from the heir of the surviving trustee, and that the other parties might account. It appeared, also, that the remaining *cestui que trusts* had been served with a copy of the bill, so that they might intervene if they pleased.

Order made.

Vice-Chancellor Knight Bruce.

Wroughton v. Barclay. Monday Jan. 11, 1847.

PRACTICE.—SOLICITOR'S LIEN.—PRODUCTION OF DOCUMENTS.

One of two defendants, who, by their answer, admitted that documents were in their possession, having, with his partner, as solicitors, a lien on those documents for costs, the court declined to order the defendants to pay those costs in order to facilitate the production of the documents.

THIS was a motion for the production of documents admitted by the defendants, who represented a public company, to be in their possession, custody, or power. The documents were in fact in the possession of Messrs. Bush & Mullens, the solicitors of the company, and the former was one of the defendants, and both claimed a lien on the documents for an unpaid bill of costs.

J. A. Cooke, for the motion, said, that the defendants were bound to pay the costs in order to facilitate the production of the documents.

Prior opposed the motion.

Knight Bruce, V. C. I do not consider

myself at liberty to order the defendants to pay these costs for the purposes of this motion.

Queen's Bench.

(Before the Four Judges.)

Richard v. Kingdon. Hilary Term, 1847.

ASSUMPSIT.—JUDGMENT VOID UNDER 7 & 8 VICT. C. 96, s. 57.

In an action of assumpsit, where the sum claimed in the declaration is 40l., and the defendant pleads non assumpsit and a tender of 13l. 19s., the cause was referred by an order of nisi prius, which was afterwards made a rule of court. The arbitrator awarded to the plaintiff the sum of 14l. 1s. 6d., exclusive of the sum paid into court on the plea of tender, judgment was entered, costs taxed, and writs of fi. fa. and ca. sa. afterwards issued.

The court made a rule absolute for setting aside the judgment and execution, under the 7 & 8 Vict. c. 96, s. 57, which abolishes arrest on final process where the sum recovered is less than 20l.

THIS was an action of assumpsit on a banker's cheque. The sum claimed in the declaration was 40l. The defendant pleaded *non assumpsit*, except as to 13l. 19s., and as to that sum a tender. The cause came on to be heard at the last assizes for the county of Devon, and was referred by an order of *nisi prius*, which was afterwards made a rule of court. The verdict was taken in the usual way for the amount claimed, subject to the award of the arbitrator, who made his award that a verdict should be entered for the plaintiff for the sum of 14l. 1s. 6d., exclusive of and in addition to the sum of 13l. 19s., which last sum the plaintiff was at liberty to take out of court. On the 10th June judgment was entered on the award and the costs taxed; on the 3rd July a *fi. fa.* issued and part of the amount levied; and on the 3rd of December the defendant was arrested under a *ca. sa.* Application was afterwards made to a judge at chambers to discharge him, which was refused. It did not appear on the affidavits what sum was indorsed on the writ of *fi. fa.* to be levied.

A rule *nisi* was obtained to set aside the judgment and execution on the 7 & 8 Vict. c. 96, s. 57, which enacts, "That no person shall be taken or charged in execution upon any judgment in any action for the recovery of any debt wherein the sum recovered shall not exceed the sum of 20l., exclusive of costs."

Mr. Crowder showed cause, and contended, that the judgment was in fact for more than 20l., being for 14l. 1s. 6d., exclusive of the sum of 13l. 19s., which was paid into court under the plea of tender; therefore, the judgment was for 28l. He also contended, that it was a mere irregularity, and on that ground the application was too late. *Wilson v. Parkins*,^a *Rutledge v. Giles*.^b

^a 5 Dowd. 461.

^b 2 Crompt. & Jer. 163.

Mr. Ball, in support of the rule. This is not an irregularity but the judgment is void. The sum recovered here is less than 20*l.*, being for the sum of 14*l.* 1*s.* 6*d.*, beyond the sum paid into court. (Stopped by the court.)

Per curiam.—Rule absolute with costs, on the understanding that no action is to be brought.

Common Pleas.

Lee v. Simpson. Hilary Term, Jan. 1847.

CHANGE OF VENUE.—MATERIAL EVIDENCE.—“DRAMATIC PIECE,” WITHIN 3 & 4 W. 4, c. 15.—PROOF OF SCIENTER.—SUFFICIENCY OF DECLARATION.

Where the authorship of a work is in issue, evidence given in corroboration of that fact is a compliance with an undertaking to give material evidence on a change of venue.

Under the provisions of the 3 & 4 W. 4, and 5 & 6 Vict. c. 45, an introduction to a pantomime is protected, and it is not necessary in an action for penalties under those statutes to allege or prove that the defendant knew of the authorship of the plaintiff when he purchased the introduction from another, and it is sufficient if the declaration follow the words of the statute, and it need not go further and allege that the pantomime was exhibited at a public place of dramatic entertainment.

THE declaration in this case, which was an action of debt for penalties under the statute 3 & 4 W. 4, c. 15, in substance stated, that the plaintiff was the author and proprietor of a dramatic entertainment called the “Prince’s Battledore, or Harlequin Shuttlecock,” and that on twenty three nights, without the consent of the plaintiff, the defendant had caused the said entertainment to be represented at a certain place of dramatic entertainment in England, to wit, at the Theatre Royal, Liverpool, contrary to the form, &c., whereby the defendant became liable to pay to the plaintiff an amount not less than 40*s.*, or the full amount of the benefit or advantage arising therefrom, or the injury sustained thereby. There was then an averment that the sum of 40*s.* had been the greatest damage done, followed by the usual conclusion. The defendant pleaded the general issue by statute. The venue was laid in Middlesex, but, on the defendant’s application, it had been changed to Surrey, and subsequently, at the instance of the plaintiff, it was again altered to Middlesex, upon his undertaking to give material evidence in that county.

At the trial before *Coltman, J.*, at the sittings in the present term in Middlesex, it was proved that in 1843, a person of the name of De Hayes had produced the introduction to the pantomime in question to the defendant as his own composition, who therefore paid him a sum of money for it, there being no doubt as to the *bona fides* of such purchase. Having so obtained the introduction, the defendant had what was called the “comic business” added to it,

the part so styled being, it appeared, the greater part of a pantomime, and consisting of the changes of scenery, and the stage tricks of harlequin, columbine, pantaloon, and the clown. The pantomime so completed was then proved to have been performed at the Theatre Royal, Liverpool, of which the defendant was the proprietor, for twenty-three nights. The evidence in support of the plaintiff’s undertaking above stated was, that the plaintiff had, at his residence in Surrey, delivered to his brother a MS. copy of the introduction in question, which was given in evidence. This copy the latter, by the directions of the former, took to the Garrick Theatre, Goodman’s Fields, in Middlesex, and offered there to the manager for sale. It was further proved that the plaintiff had, at his residence, also read over a MS. copy, not produced in evidence, to a witness named Forrester, for the purpose of having sketches made, and that Forrester had illustrated it somewhere in Horsemonger-lane. The jury had found a verdict for the plaintiff for the sum of 45*l.*, and

Mr. D. Hill now moved to set aside that verdict and for a new trial, or to arrest the judgment. First, the plaintiff had failed to comply with his undertaking, not having given material evidence in Middlesex. Mere relevant evidence is not enough; *Clarke v. Dunsford*, 15 Law Jour. N. S. C. P. 146. Secondly, the statute under which the action is brought, being penal, must be construed strictly, and, if so, it is submitted a pantomime is not included in the terms “dramatic piece” contained in that statute, being mentioned expressly for the first time in 6 & 7 Vict. c. 68, *R. v. Handy*, 6 T. R. 286. Besides, this is only a part of a pantomime, and the statute meant an integral work. Thirdly, the *scienter* on the part of the defendant is here wanting, which was necessary to make him “an offender” within the meaning of the act; *R. v. Marsh*, 2 B. & C. 720; *Earl Spencer v. Swannell*, 3 M. & W. 162. Lastly, it is submitted that the allegation, a “certain place of dramatic entertainment,” contained in the declaration, is not sufficient. The plaintiff should have gone beyond the enactment, and alleged that it was a public representation at a public place of entertainment, as the defendant might have selected the theatre as the most convenient place for a private entertainment; *Fletcher v. Calthorp*, 14 Law Jour. N. S. 49, Q. B.; *Chaney v. Payne*, 1 G. & D. 348.

Wilde, C. J. First, it has been insisted that the evidence given by the plaintiff was not of a character to satisfy his undertaking. It is not necessary that such evidence should be essential to the action, but it must be material in some sense to the verdict, and that may be either by supporting the action, or as showing the nature and extent of the particular injury. The paper read by the plaintiff in Surrey to Forrester was not produced at the trial nor read by Forrester; and as confirmatory evidence of authorship it was proved that a manuscript copy had been exhibited for

sale in Middlesex, which contained the matter that Forrester had heard repeated. The latter evidence, therefore, was material in confirmation of authorship, and relevant to the issue. Then as to the next point, that this is not a composition within the act. This was a complete and perfect introduction, and that was all that was intended either by the plaintiff or defendant when purchased. It was valuable property in itself, and therefore it was a dramatic piece of that character and description which the statute intended to protect. It is said the defendant acted innocently and without a knowledge of the plaintiff's right, and therefore was not liable as "an offender" in a penal action like the present. Now the object of the act was to protect property, and the defendant is "an offender" in the sense of having, contrary to the act, made use of the property of another. It would be an illusory protection if the plaintiff were bound to prove knowledge on the part of the defendant, and we think that the *scienter* is not material to that protection which the act sought to afford. As to the last point, the defendant appeared to be the proprietor of a place of public entertainment, and a representation in such a place was what the statute and the declaration following the statute meant. If it were not a public entertainment, it was open to the defendant to prove that under the plea of not guilty, and therefore, in the absence of any authorities applicable to the present case, the rule, on the whole, ought not to be granted.

The rest of the court concurred.

Rule refused.

Court of Exchequer.

Chilton v. The London and Croydon Railway Company. Hilary Term, 20th Jan., 1847.

RAILWAY COMPANY. — BYE-LAW. — ARREST.

A railway company made a bye-law that every passenger who should not deliver up his ticket when required should pay the fare from the place whence the train originally started. Held, that, assuming the bye-law to be reasonable, the company had no power to arrest a passenger who, having lost his ticket, refused to pay the full fare.

THIS was an action of trespass brought by George Chilton, Esq., Q. C., against "The London and Croydon Railway Company" for false imprisonment.

The defendants pleaded a long special plea, stating in substance that they had constructed a railway for the carriage and conveyance of passengers from Croydon to London, under and by virtue of certain statutes which were enumerated; that after the passing of the 3 & 4 Vict. c. 97, intituled "An Act for regulating Railways," they, in pursuance of the powers and authorities given them by that act, duly made and reduced into writing, under their common seal, certain orders and regulations for regulating the travelling upon the said rail-

way. The plea then set out the orders, among which were the following:—"Each passenger booking his place will be furnished with a ticket which he is to show when required by the guard in charge of the train, and to deliver up before leaving the company's premises to the guard or other servant duly authorised to collect tickets. Each passenger not producing or delivering up his ticket will be required to pay the fare from the place whence the train originally started." The plea then alleged that the orders and regulations were laid before and approved of by the Board of Trade, in pursuance of the act of 3 & 4 Vict., and that they were painted on boards and affixed in conspicuous parts of the toll-houses or stations at London and Croydon. That the fare of one shilling and threepence was the fare between London and Croydon in a first-class carriage; that the plaintiff became a passenger in a first-class carriage and travelled upon the railway to London; and that when the train arrived at the London station a servant of the company, duly authorised to collect the railway tickets, demanded of the plaintiff as such passenger his railway ticket. Yet the plaintiff did not nor would produce or deliver up his ticket, and thereupon S., the duly authorised officer and agent of the company in that behalf, requested the plaintiff to pay the fare of one shilling and threepence, being the fare from Croydon to London, which the plaintiff refused, whereupon and because the plaintiff's name and residence was unknown, the company, by S. their officer and agent, committed the alleged trespasses as they lawfully might.

To this plea the plaintiff replied, that he was not a passenger from Croydon to London, but from Sydenham to London; that he booked his place and paid the fare of one shilling, being the fare from Sydenham to London; that he was furnished with a ticket which contained the words following:—"First-Class. Croydon Railway. Sydenham to London. This ticket must be presented open to the conductor on arrival, otherwise the fare must be paid." That before the arrival of the train at London he accidentally lost the ticket, and in consequence could not produce or deliver up the same when requested, and that he was ready and willing and offered to pay the sum of one shilling for the fare, of all which premises the company had notice.

The defendants rejoined, denying that they had notice of the several matters alleged in the replication.

To this rejoinder the plaintiff demurred specially on the ground that the allegation of notice was not material or traversable. Joinder in demurrer.

Peacock in support of the demurrer. The first question is, whether the bye-law is reasonable and valid. The power of the company to make bye-laws depends upon the 106th section of the 5 W. 4, c. 10, but that applies only to bye-laws relating to the management of the company itself. The 127th section prohibits the company from charging more than three

pence halfpenny a mile for the conveyance of passengers, but the effect of this bye-law is to enable them indirectly to charge more than the act of parliament allows. A poor person who had travelled ten miles might be compelled to pay for two hundred if he had the misfortune to lose his ticket, or if his pocket was picked in the train. It would make no difference whether the servants of the company knew at what place he got in; if he was unable to pay the fare from the most distant spot he must be locked up. The company might protect themselves from fraud by having more servants, and not allowing persons to enter the carriages without producing their tickets. Although it may be incident to a railway company to make bye-laws, yet when their power is defined and limited by charter or act of incorporation, the general power ceases. *Child v. The Hudson's Bay Company*, 2 P. W. 207. The bye-laws of a corporation affect its members only, and do not bind strangers. *Kyd on Corp. Com. Dig. tit. Bye-law 2*. If the company were to make a bye-law that no servant should receive money from a passenger, would it be said that a passenger who gave a shilling to a servant was liable to be imprisoned. The bye-law might be good as against the servant, but not against the stranger. Secondly, assuming the bye-law to be valid, the company had no power to arrest for a breach of it. The 163rd section enacts, that all penalties imposed by that act, or by any bye-law made in pursuance thereof, may be recovered in a summary way by order of two or more justices of the peace, and one moiety of the penalty is to go to the informer, and the other to the company. The 165th section enables any officer to seize and detain any person whose name and residence shall be unknown who shall commit any offence against that act. The different language of these sections shows that the legislature intended to confine the power of arrest to acts committed, such as injuring the railway, and not to mere acts of omission.

Kennedy, contra. The bye-law is reasonable. Without such a bye-law the company would be subject to continual frauds, as it is impossible for their servants to know the distance each passenger has travelled. It is said that bye-laws do not bind the public; but in this case the interest of the company and the public is identical. Great delay and inconvenience would arise, if upon the arrival of the train at each station a discussion ensued as to how far each passenger had travelled. To obviate that it is reasonable to require that every passenger should produce his ticket, and if the bye-law is reasonable the power of arrest is essential to enforce it. The fare from the most distant point is in the nature of a fine or penalty. The 31st section of the 1 Vict. c. xx., shows that the legislature understood the 106th section of the 5 W. 4, c. 10, as applying to the public.

Parke, B. You cannot get over this difficulty that the money demanded was by way of fare, and not in the nature of a penalty, so that the company had no right to arrest, even sup-

posing the 165th section sanctions arrest in cases where penalties are imposed by bye-laws. Upon the other points it is unnecessary to give any opinion, though I am inclined to think the bye-law reasonable.

Alderson, B. I doubt whether the 165th section does not limit the power of arrest to cases in which penalties are imposed by the act itself. But I am clearly of opinion that the plaintiff's conduct was not an offence for which he could be taken into custody.

Rolfe, B. The offences for which the legislature intended that parties should be imprisoned at once, are offences against the act, such as damaging the railway, or leaving the gates open, &c.

Platt, B., concurred.

PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

House of Lords.

NEW BILLS IN PROGRESS.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy. Abolishing Court of Review, and Reducing Number of Commissioners. (No. 2.) For 2nd reading. Lord Brougham.

Criminal Law: In Select Committee.

Markets and Fairs Clauses.—Public Undertakings Clauses.—Gas Works Clauses.—Waterworks Clauses,—For 2nd reading.

House of Commons.

NEW BILLS IN PROGRESS.

City Small Debts Court. In Committee. Mr. Masterman.

Drainage of Land Act Amendment. Passed. Sir G. Grey.

Law of Railways. For 2nd reading. Mr. Strutt.

Agricultural Tenant-right. In Committee. Mr. Strutt.

Roman Catholics Relief. In Committee. Mr. Watson.

Pious and Charitable Property. For 2nd reading. Lord J. Manners.

Rating Small Tenements. For 2nd reading. Mr. Waddington.

For the Speedy Trial and Punishment of Juvenile Offenders. For 2nd reading. Sir John Pakington.

To Encourage Life Insurance. For 2nd reading. Mr. Godson.

NOTICES OF NEW BILLS.

Inclosure Act Amendment. Sir F. Thesiger.

Commons Inclosure. Sir W. Somerville.

Drainage of Lands. Earl of Lincoln.

Roman Catholic Charitable Trusts. Mr. J. Romilly.

Lunatic Asylums Regulation. Attorney-General.

THE EDITOR'S LETTER BOX.

The pressure of much matter of immediate importance has rendered it necessary to defer several valuable letters.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 27, 1847.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

NEW COUNTY COURTS.

OBSERVATIONS ON THE RULES FOR REGULATING THE PRACTICE.

ONE of the most popular arguments in favour of the act under which the new County Courts are established, and that most strongly insisted upon by the promoters is, that it will render law cheap, and therefore accessible to persons of all degrees. The application of the principle is illustrated by the manner in which it is proposed to compensate witnesses. In actions brought in the superior courts the following is the usual allowance per day to witnesses attending the sittings or assizes.*

Gentlemen, merchants, bankers, and professional men, 1*l.* 1*s.*

Tradesmen, auctioneers, accountants, clerks, and yeomen, 10*s.* to 15*s.*

Journeymen, labourers, and the like, 5*s.* to 7*s.* 6*d.*

Travelling expenses per mile, (one way,) 1*s.*

We do not remember to have ever heard it alleged, that this scale was exorbitant, or that it afforded anything more than a reasonable compensation for the loss of time of those who were compulsorily called away from their own affairs, to testify to facts the proof of which was supposed to be beneficial to the party requiring the attendance of the witness: on the other hand, we have frequently heard witnesses complain of the niggardliness and inadequacy of the allowance, and question the justice of the system under which their personal interest and convenience was placed at the mercy of litigant parties,

with whom they were in nowise connected. Under the new scheme for administering justice, the scale of allowance to witnesses is to be reduced nearly two-thirds.

It is provided by the General Rules, that “the judge shall in each case order what number of witnesses shall be allowed on taxation of costs, the allowance for whose attendance shall be according to the scale in the schedule, unless otherwise ordered, *but in no case to exceed such scale.*” (r. 35.) The scale alluded to, which contains the maximum allowance to witnesses, is as follows:—

Gentlemen, merchants, bankers, and professional men	s. d.
Tradesmen, auctioneers, accountants, clerks, and yeomen	7 6
Journeymen, labourers, and the like	5 0
Travelling expenses per mile (one way)	2 0
	0 6

Now the value of the time lost in attending to give evidence in one court is precisely the same as that employed in attending to give evidence in the other, and it is tolerably clear that either the witness subpoenaed to give evidence in the superior courts is greatly overpaid, or a considerable sacrifice is required of that which to persons who have any profitable employment is equivalent to money—time—from those who may be called on as witnesses in the County Courts. Indeed, a slight examination of the scale to be adopted in the County Courts, will show that a very heavy burthen is thus about to be imposed on a class of persons not always well able to bear it. It may be somewhat difficult to estimate the value of time to professional men, or even to tradesmen, but the usual rate of wages to journeymen in

* See Bagley's Practice, pp. 182, 183.
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various trades is a matter of notoriety. For example, carpenters, masons, joiners, bricklayers, and other journeymen engaged in building and house work, are paid in the metropolis and its neighbourhood from 4s. 6d. to 6s. per diem. Journeymen in many other trades—printers for instance—earn a much larger sum. According to the scale of allowance now adopted, when the evidence of persons of this class is required, the utmost compensation they are entitled to receive is 2s. per diem. So that every employed journeyman subpoenaed as a witness will suffer a positive pecuniary loss. No doubt the effect of this will be to prevent the costs falling so heavily on the litigant parties, but it will be taking it off their shoulders to throw it upon others who have no interest in the event. What the parties gain the persons compelled to attend as witnesses will lose, and when this begins to be felt and understood, it will tend to create a disinclination to appear as a witness which can scarcely fail to operate adversely to the purposes of justice. At all events, when the economy of the new scheme is adverted to, let not the means by which it is effected be forgotten!

As regards executors, the new rules invest the judges of the County Court with a discretion which seems, in our humble judgment, rather to exceed strict legal limits. The 66th section of the statute enacts, "that it shall be lawful for any executor or administrator to sue and be sued in any court holden under this act, in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in any superior court." The 31st of the rules, however, provides that "if the sole defence of executors or administrators be, that they have fully administered, and the judgment of the court is for the defendants, it shall be, that the amount found to be due be paid and levied out of the assets of the deceased *quando acciderint*, and the costs shall be in the discretion of the judge." Now, if the judge, acting upon the power which this rule apparently confers upon him, should direct the costs in such a case to be paid by the executor, it would be a judgment not warranted by law or justice, and certainly not such a judgment as "in the like case" would be given in any superior court. In Mr., now Justice, Williams's *Treatise on the Law of Executors*,^b it is expressly stated, that when an

executor or administrator pleads *piene administravit*, or judgments outstanding, and the plaintiff takes judgment of assets *quando*, &c., the executor or administrator is not liable to costs *de bonis propriis*;^c and the reason for the rule is obvious, as by taking judgment of assets *quando*, the plaintiff admits that the defendant has fully administered to that time, and it would be a grievous hardship on an executor to oblige him to defray out of his own pocket the expenses of a suit in which he succeeded in establishing the only defence raised by him. The discretion given to the judge of the County Court by the rule must, therefore, be construed to mean a discretion limited to deciding whether the costs are to be paid by the unsuccessful plaintiff, or to be recovered *de bonis testatoris, quando acciderint*, though as the judgment must be such as in the like case would be given by the superior courts, we are not certain that he could legally exercise even this limited discretion.

The rules now promulgated are wholly silent with respect to the course of proceeding to be pursued at the trial or hearing of a cause. The 74th section provides, that "on the day in that behalf named in the summons the plaintiff shall appear;" and the 79th section further provides, "That if upon the day of the return of any summons, or at any continuation or adjournment of the said court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out." Still, it is left in doubt, whether the plaintiff must appear in his proper person, or whether an appearance by attorney, as in the superior courts, will be sufficient. It frequently happens that a transaction which forms the subject of litigation is managed wholly by shopmen or agents, without any direct interference on the part of the principal. In such cases, why should the plaintiff be put to the inconvenience and loss of attending in court? Many persons engaged in extensive business would forego a small, or even a considerable claim, rather than submit to the inconvenience of personal attendance.

The general rules contain no reference, explanatory or otherwise, as to the right of practising in the new courts, or the allowance of costs. The course of proceeding in these respects at present rests altogether

^b Vol. 2, 3rd ed. p. 1561.

Citing 1 Saund. 336, *b*, note; Tidd, 980 9th edit.

upon the sections of the statute; and it is impossible not to perceive that the working of the measure must depend materially upon the construction to be put upon those sections. We confess we should have thought it of the utmost importance, that before the act comes into general operation some announcement should have been made authoritatively of the course intended to be pursued. It seems tolerably clear that under the 95th section, an attorney of one of the superior courts, or a barrister instructed by such attorney, is entitled to appear for either plaintiff or defendant in any proceeding in the new courts; but then comes the extraordinary restriction, that "no barrister, attorney, or other person, except by leave of the judge, shall be entitled to be heard to argue any question as counsel." If, as we have always understood, arguments addressed to a court by competent persons, are calculated to afford the most direct and valuable assistance to the judge in the performance of his duty, we shall not assume it to be possible that any man could have been selected to fill the office of a judge of the new County Courts, so arrogant, or so stupid, as to reject such a powerful auxiliary. We presume, therefore, that the leave of the judge to argue any arguable point will be freely conceded to every professional man properly instructed, and that the exercise of the judge's veto will be reserved for those instances, we trust of rare occurrence, in which there may be reasonable ground to apprehend an abuse of professional privilege under the semblance of an argument. We do not participate in the alarm felt by some persons as to the probable consequences of the authority with which the judge is invested, in permitting persons, other than barristers or attorneys, to represent the parties in a cause. We can readily conceive many instances in which such a permission may be conveniently and advantageously granted, and we cannot suppose it possible that any judge, by the injudicious exercise of this power, will degrade the tribunal over which he presides by encouraging the pestilent race of sham lawyers.

Assuming, as we are bound in fairness to do, that the new judges will be anxious to maintain the dignity of their courts, as well as to render them useful to the public, and with these objects desire to see themselves surrounded by respectable practitioners, the great difficulty will be to effect

that result, and at the same time adhere to the miserably inadequate scale of compensation for professional services prescribed by the act. The 91st section provides, that no attorney shall be entitled to have or recover for appearing or acting for any other person in the said court, "more than 10s. for his fees and costs, unless the debt or damage claimed shall be more than 5l., or more than 15s. in any case within the summary jurisdiction given by this act;" and that in no case shall any fee exceeding 17. 3s. 6d. be allowed for employing a barrister as counsel in a cause. If the construction to be put upon this clause is, that an attorney, retained to bring a suit, seeing to all the preliminary proceedings,—that the action is properly described in the summons, that the evidence in support of the case is examined into and sifted, the necessary notices given and subpoenas served upon witnesses, and when this is deemed expedient, that counsel is fully instructed, and the trial attended and conducted—is to be remunerated for his services and advice by no greater sum than 10s. or 15s., as the case may be, it is simply preposterous, and amounts to a denial of professional assistance. Ordinary suitors are in general physically and mentally incapable of acting efficiently as advocates in a court of justice, or of understanding or applying the rules for the regulation of judicial practice. In contests of this nature, if the struggle must be between the parties in person, the unscrupulous and the knavish would have an obvious advantage over the conscientious and the simple minded. Whatever may be the extent of the capacity or the patience of the judge, justice could not be done. There is another view, more probable, but not more encouraging. In the absence of professional men, a race of harpies would spring up about the Small Debts Courts, pressing their assistance upon the suitors, and availing themselves of any degree of confidence that may unfortunately be reposed in them for purposes of oppression and extortion. We admit that much depends upon the judges, but if this mischievous race should once get a footing in the new courts, no exertions of the judges can prevent the stream of justice from being polluted, and the tribunal rendered odious to the public. The only means, as it appears to us, by which competent professional assistance can be secured to the suitors in these courts is, by giving a liberal construction to the

clause in question, and holding, as already suggested,^d that, although 10s. or 15s., as it may be, is the maximum sum which an attorney can be allowed for his attendance upon any proceeding *in court*, he is entitled in addition to reasonable but moderate charges for collecting evidence, drawing and engrossing a brief for counsel, when necessary, and taking other preparatory steps indispensable to the fair hearing of a litigated case. Without this, or some equivalent arrangement, by which the services of respectable practitioners can be obtained by litigant parties in the County Courts, we venture to predict that the whole experiment will end in disappointment and injustice:

REVERSAL OF AN ORDER DISMISSING A MASTER OF THE SUPREME COURT OF MADRAS.

THE Judicial Committee of the Privy Council have been for some time engaged in the hearing of an appeal against an order of the Supreme Court of Madras, dated the 11th June, 1845, dismissing James Minchin, Esq., from his office of Master, upon the ground of alleged misconduct. The members of the council who attended during the argument and judgment were, Lord Langdale, Lord Brougham, Lord Campbell, the Judge of the Admiralty Court, and Sir Alexander Johnstone. The case cannot be said to be devoid of professional interest.

It appeared that Mr. Minchin was appointed to the office of Master on the 2nd February, 1841, and that it was one of his duties to tax the bills of costs of solicitors. His remuneration arose out of fees. A table of fees to be allowed to the Master and other officers, and to solicitors, was published in the year 1802, but subsequently it became the practice to allow certain fees not specifically mentioned in the table. Mr. Minchin considered himself entitled to receive the fees usually allowed to the Master, and declared his opinion on this point so far back as the year 1842, when certain reductions were contemplated. The Chief Justice then appeared to assent to Mr. Minchin's views, and intimated that the proposed retrenchments must fall upon his successor. In 1845, however, the judges of the Supreme Court determined upon diminishing the expense of proceedings in the court, and directed a circular to be sent to the solicitors

at Madras for information as to the costs allowed upon taxation. They were informed in reply, that some of the charges made in the Master's office were objected to. Mr. Minchin contended, that these charges were justified by usage, and desired a commission to examine Sir Robert Comyn, the late Chief Justice, and Mr. Savage, who was formerly Master, as to the usage. The judges, however, declined to make an order for the examination of Sir Robert Comyn and Mr. Savage, and informed Mr. Minchin that they would not in future allow any charges but those specified in the table of fees. Mr. Minchin intimated his intention to appeal from the decision of the judges. Pending this discussion, certain bills of costs allowed by the Master in a case of *Mottee Ram v. Campbell*, were brought before Mr. Justice Burton for his allocatur, which afforded some ground for believing that certain charges were allowed for business not actually done. It was alleged that fees were allowed to the solicitor and Master for attending warrants not attendable, and for affidavits of service and attendances thereon which were unnecessary. Mr. Minchin's explanation of these charges was unsatisfactory to the judges, and the court therefore decided that he had acted unlawfully, and removed him from his office.

Lord *Langdale*, on the 6th instant, pronounced the judgment of the Judicial Committee, and after recapitulating the facts, proceeded as follows:—

"We consider that the order against which Mr. Minchin has appealed should be reversed, and shall so report to her Majesty. We undoubtedly consider it to be the duty of those who preside over the courts and offices of justice to use their utmost vigilance and endeavours to prevent any extortion upon the suitors; to take the utmost care that every fee or sum of money, which ought to be received by the officers and solicitors, shall have a legal sanction for its receipt, and that no more than the sum legally sanctioned shall be received. But in almost every court it has happened that, in the progress of time, and unnoticed by the court, the practice of receiving sums not legally sanctioned, but which in themselves are reasonable, and would have been sanctioned if duly noticed, has grown up, together with the practice of receiving sums which are both illegal and unreasonable, and which would have been forbidden if duly noticed. Such practice having been adopted by one officer after another, each following his immediate predecessor, it becomes at length, in the absence of any reference to the duly established rule, a sort of evidence of a right or supposed right, and the office is innocently accepted upon the notion

^d *Ante*, vol. 32, p. 524.

and in the reliance that the right is established by the usage which has been acquiesced in and has prevailed under the allocatur of the judges. When practices of this sort come under observation, it is the duty of the court to exercise or procure the exercise of a legal authority to re-trench fees illegal and unreasonable, and to establish fees which may be reasonable and just, though not legal until duly sanctioned. But in the consideration of such cases, it ought to be carefully observed that an officer following the steps of his predecessor may have received fees which ought not to be allowed or continued, and may, nevertheless, not be justly chargeable with any corruption or moral guilt. In the present case, Mr. Minchin appears to have followed the example of those who went before him, and in circumstances which might reasonably lead him to think that the past allowance of such fees amounted to an authority to him to allow, charge, and receive them. If they were improper it was the duty of the judges to prohibit the allowance of them for the future, but in the absence of misconduct by corruption or disobedience proved, it does not appear to us to have been their duty to dismiss Mr. Minchin from his office. The judges, in the reasons which they assign for the order of the 11th of June, state that the taking of the affidavits complained of had been of long practice in the Master's office, and was traced up through numerous bills in Mr. Minchin's time, and to a period before he held the office. The like observation might have been fairly made upon the other matters complained of, and it appears to us that there was no evidence before the court from which it could justly be inferred that Mr. Minchin was guilty of wilful corruption, or fraud, or great misconduct. If there had been evidence to warrant such a conclusion, it would have been right to dismiss him from his office; but in the absence of such evidence such fees as were improper might have been prohibited or disallowed for the future by proper authority; but we think an officer who has allowed and taken them, in the circumstances in which Mr. Minchin was placed, ought not to have been dismissed. The judges, in giving their reasons for the orders they made, have made use of expressions affecting the moral and personal character of Mr. Minchin, which we deeply regret, as we do not think they were warranted by the facts of the case."

It was stated by Mr. Minchin's counsel that he did not propose to return to India, and only desired that the judgment of the Privy Council should be laid before her Majesty.

GRIEVANCES OF THE PROFESSION.

SOLICITING PATENTS.

To the Editor of the *Legal Observer*.

SIR,—In the *Times* of the 5th instant, I observe an advertisement from certain patent agents, who are not solicitors.

Surely some notice ought to be taken of this, and a proper representation made to the Attorney and Solicitor-General, who would, I trust, decline to receive papers relating to patents, except through the medium of solicitors. I apprehend that a notice to the agents themselves would be attended with a beneficial result. I conceive they are liable to a prosecution for acting as attorneys.

CIVIS.

DISTRICTS OF THE NEW COUNTY COURTS.

[Concluded from our last No.]

LINCOLNSHIRE.

Barton-on-Humber, the sub-district of Barton-upon-Humber, in Gissford-Brigg, consisting of the parishes of East Halton, Kettlethorpe North and South, Barrow, Barton St. Mary and St. Peter, Bonby, Ferryby South, Goxhill, Horkstow, Saxby, Thornton Curtis, Ulceby, and Wootton in Lincolnshire.

Boston, Boston.

Bourne, Bourne.

Brigg, Glandford-Brigg, except the sub-district of Barton-upon Humber (see *Hull*).

Caistor, The sub-district of Caistor, in Caistor, consisting of the parishes of Cabourn, Cuxwold, Rothwell, Swallow, Swinhope, Caistor, Holton-le-Moor, Claxby, Kelsey South and North, Normanby-le-Wold, Croxby, Thoresway, Thorganby, Brocklesby, Keelby, Limber Magna, Riby, Bigby, Grashy, Searby-with-Owmbly, Somerby, and Nettleton, and Chapelry of Clixby.

Gainsborough, Gainsborough.

Grantham, Grantham. The parishes of Barkston, Foston, Haugham, Marston, Allington East and West, Sedgebrook, and Syston.

Great Grimsby, The sub-district of Great Grimsby, in Caistor, consisting of the parishes of Great Grimsby, Ashby-cum-Fenby, Barnoldby-le-Beck, Aylesby, Bradley, Beelsby, Brigsley, Cloe, Coates (Great and Little), Hatcliffe, Hawerby-with-Beesby, Healing, Humberstone, Laceby, Irby, Ravendale (East and West), Scartho, Waltham, Immingham, Haburgh, Stallingborough, Cleethorpes, and Newton Wold. The parishes of Grainsby, Holton-le-Clay, Tetney, and Waith.

Holbeach, Holbeach.

Horncastle, Horncastle (except the parishes of East Barkwith, West Barkwith, West Torrington, and Wragby (see *Market Rasen*)).

Lincoln, Lincoln, except the parishes of Holton Beckering, Wickenby, Cold Hanworth, Snarford, Friesthorpe, Faldingworth, Snelland, Normanby by Spital, Owmbly, Caenby, and Loxby (see *Market Rasen*).

Louth, Louth, except the parishes of Grainsby, Holton-le-Clay, Tetney, Waith, Ludford, Hainton, and South Willingham (see *Great Grimsby* and *Market Rasen*).

Market Rasen, The sub-district of Market Rasen, in Caistor, consisting of the parishes of Glentham, Kingerby, Kirkby-cum-Osgodby, Newton by Toft, Toft next Newton, Owersby (North and South), Linwood, Market Rasen, Rasen (Middle), Rasen

a Towns in which courts are to be holden.

b Superintendent Registrar's districts, parishes, hamlets, townships, tithings, hamlets, or precincts, forming the district of each court town

(West), Stainton-le-Vale, Tealby, Thornton-le-Moor, Usselby, Walesby, Willingham (North), Snitterby, Waddingham, Lissington, Legsby, Sixhills, Kirkmond-le-Mire, Torrington (East), Bishop Norton, and Busslingthorpe. The parishes of Ludford, Hainton, South Willingham, East Barkwith, West Barkwith, West Torrington, Wragby, Ilton-Beckering, Wickenby, Cold Hanworth, Snarford, Friesthorpe, Faldingworth, Snelland, Normanby by Spital, Owmby, Caenby, and Loxby.

Sleaford, Sleaford.

Spalding, Spalding. The parish of Crowland.

Spilsby, Spilsby.

Stamford, Stamford.

MIDDLESEX.

Brentford, Brentford.

Edmonton, The sub-districts of Edmonton, Enfield, and Tottenham in Edmonton, consisting of the parishes of Edmonton, Enfield, and Tottenham.

Uxbridge, Uxbridge. The sub-district of Iver, in Eton consisting of the parishes of Iver, Fulmer, Langley Marsh, Denham, Hedgerley, and the hamlet of Hedgerley Dean, in the parish of Farnham Royal. The parishes of Cranford, Harlington, and Harmondsworth, in Staines.

1. *Westminster*,^c The district^d of the Westminster County Court of Middlesex shall include all within a line drawn from the point where the cities of London and Westminster meet on the river Thames along the boundary of the city of London to Holborn Bars, thence along the middle of Holborn, Oxford-street, and the Uxbridge-road until the Uxbridge-road crosses the Serpentine river, thence along the Serpentine river to Rotten-row, thence along the middle of the road through Albert-gate to the Knightsbridge-road, thence along the middle of the Knightsbridge-road to Sloane-street, thence along the middle of Sloane-street, across Sloane-square, along the middle of Lower Sloane-street, Turk's-row, and Franklin's-row to the gate leading into the road which divides the Kitchen-gardens of Chelsea Hospital from the Governor's garden and garden meadow, thence along the said road and the boundary of the said Hospital kitchen garden to the river Thames, thence along the Thames to the point first described.

2. *Brompton*, The district of the Brompton County Court of Middlesex shall include all within a line drawn from the point on the river Thames where the parishes of Acton and Hammersmith meet, along the common boundary of the parishes of Acton and Hammersmith till it crosses the Uxbridge-road, thence along the middle of the Uxbridge-road till it crosses the Serpentine river, thence along the western boundary of the Westminster County Court of Middlesex hereinbefore described, to the river Thames, and along the Thames to the point first described.

3. *Mary-le-bone*, The district of the Mary-le-bone County Court of Middlesex shall include all within a line drawn from the point where the common boundary of the parishes of Hammersmith and Acton crosses the Uxbridge-road, along the middle of the Uxbridge-road and Oxford-street to Portman-street, thence along the middle of Portman-street, the street on the west side of Portman-square, Gloucester-street, Gloucester-place, across the New-road, Upper Gloucester-place, the street on the east side of

Dorset-square, Dorset-place, Upper Gloucester-place, Taunton-place, Park-road, and Primrose Hill-road, till it meets the Avenue-road thence along the middle of the Avenue-road and the New-road to Finchley to the northern boundary of the parish of Saint John Hampstead, thence westward along the boundary of the parish of Saint John Hampstead, to the Edgware-road near Cricklewoods, thence along the Edgware-road to the boundary of the parish of Willesden at Brent Bridge, thence along the northern and western boundary of the parish of Willesden including the whole parish of Willesden and precinct of Twyford Abbey, till it meets the common boundary of the parishes of Acton and Hammersmith in the point first described.

4. *Bloomsbury*, The district of the Bloomsbury County Court of Middlesex shall include all within a line drawn from the point where the boundary of the parish of Saint John Hampstead crosses the New-road to Finchley, along the eastern boundary line of the Mary-le-bone County Court of Middlesex hereinbefore described to Oxford-street, thence along the middle of Oxford-street and Holborn to King-street, thence along the middle of King-street, Upper King-street, Southampton-row, the street on the east side of Russell-square, Woburn-place, the street on the east side of Tavistock-square, Upper Woburn-place, to the New-road, thence along the middle of the New-road to the boundary of the parish of Saint Pancras, at King's cross, thence along the eastern and northern boundary of the parish of Saint Pancras till it meets the boundary of the parish of Saint John Hampstead, thence westward along the northern boundary of the parish of Saint John Hampstead to the point first described.

5. *Clerkenwell*, The district of the Clerkenwell County Court of Middlesex shall include all within a line drawn from the point where the boundary of the city of London crosses Finsbury-place, along the middle of Finsbury-place, the street on the west side of Finsbury-square, the City-road, Winkworth-buildings, East-road, Brudenell-place, and the New North-road to the Regent's-canal, thence along the middle of the Regent's-canal until it is crossed by the Kingsland-road, thence along the middle of the Kingsland-road to the southern boundary of the parish of Tottenham, thence westward along the boundary of the parish of Tottenham to the boundary of the parish of Hornsea, thence along the boundary of the parish of Hornsea and chapelry of Ilighbgate, including the whole of the said parish and chapelry, to the boundary of the district of the Bloomsbury County Court of Middlesex, thence along the eastern boundary of the last-mentioned district to the point where King-street meets Holborn, thence along the middle of Holborn to Holborn-bars, thence along the northern boundary of the city of London to the point first described.

6. *Shoreditch*, The district of the Shoreditch County Court of Middlesex shall include all within a line drawn from the point where the boundary of the city of London crosses Finsbury-place, along the eastern boundary of the district of the Clerkenwell County Court of Middlesex to the southern boundary of the parish of Tottenham, thence eastward along the said boundary to the boundary of the county of Middlesex, thence southward along the boundary of the said county to the northern boundary of the parish of Stratford-le-Bow, thence westward along the boundary

^c Name of the court.

^d Description of District.

of the said parish until it is crossed by the southern side of the Eastern Counties Railway, thence westward along the southern side of the Eastern Counties Railway till it crosses Brick-lane, thence along the middle of Brick-lane, Phoenix-street, Wheeler-street, and White Lion-street to Norton Folgate, thence along the middle of Norton Folgate to the boundary of the city of London, thence westward along the boundary of the city of London to the point first described.

7. *Bow*, The district of the Bow County Court of Middlesex shall include the parishes of Bromley and Stratford-le-Bow, and the superintendent registrar's district of West Ham.

8. *Whitechapel*, The district of the Whitechapel County Court of Middlesex shall include all within a line drawn from the point where the eastern boundary of the city of London leaves the river Thames, along the said boundary until it is crossed by Norton Folgate, thence along the middle of Norton Folgate, White Lion-street, Wheeler-street, Phoenix-street, and Brick-lane, until it is crossed by the southern side of the Eastern Counties Railway, thence eastward along the southern side of the said Railway until it crosses the boundary of the parish of Stratford-le-Bow, thence southward along the western boundary of the parishes of Stratford-le-Bow and Bromley to the boundary of the parish of Poplar, thence along the common boundary of the parishes of Bromley and Poplar to the boundary of the county of Middlesex, thence southward along the boundary of the said county to the river Thames, thence along the river Thames to the point first described.

MONMOUTHSHIRE.

Abergavenny, Abergavenny, except the parishes of Aberystroth Redwelly, Bettws Newydd, Bryngwyn, and hamlet of Clytha (see *Tredegar* and *Usk*).

Chepstow, Chepstow, except the parishes of Llan-soy and Llangwn, Llanvihangel-Tor-y-mynydd, Wolvesnewton, and the western division of Newchurch (see *Usk*).

Monmouth, Monmouth, except the parishes of Llan-denny, Llanishen, and Ragland (see *Usk*).

Newport, Newport, except the parishes of Llan-bennock, Kemeys Inferior, and Tredunnoch (see *Usk*).

Pontypool, Pontypool, except the sub-district of Usk and the parishes of Glascoed, Llandegoeth, and Llangibby (see *Usk*).

Tredegar, Parishes of Aberystroth and Bedwelly, in Abergavenny.

Usk, The sub-district of Usk, in Pontypool, consisting of the parishes of Usk, Trostrey, Llangew-vue, Gwernesney, Llanllowel, Llanbadoch, Llantrissant, Kemeys Commander, and Goytre, with the hamlet of Gwehellog and precinct of Monkswood. The parishes of Bettws Newydd, Bryngwyn, Glascoed, Kemeys Inferior, Llandegoeth, Llangwn, Llan-soy, Llanvihangel-Tor-y-mynydd, Llanishen, Llandenny, Llanbennock, Llangibby, the western division of Newchurch, Ragland, Tredunnoch, Wolvesnewton, and the hamlet of Clytha.

NORFOLK.

Attleborough, Guiltcross, Wayland.

Aylsham, Aylsham.

Downham Market, Downham Market, except the parishes of Holme next Runceton, Tottenhill, Wormegay, Watlington, Wiggenhall St. Mary Magdalene, Wiggenhall St. Germain, and Wiggenhall St. Peter (see *King's Lynn*).

East Dereham, Mitford and Launditch.

Harleston, Depwade, except the sub-district of Fornsett, and the parishes of Diss, Scole, Thorpe Parva, Frenze, and Thelverton, in the sub-district of Diss (see *Wymondham and Eye*). The parishes of Flixton, Homersfield, All Saints South Elmham, St. Cross South Elmham, St. James South Elmham, St. Margaret South Elmham, St. Michael South Elmham, St. Nicholas South Elmham, and St. Peter South Elmham, in Wangford. The parishes of Fressingfield, Mendham, Metfield, Syleham, Weybread, Wingfield, and Withersdale, in the sub-district of Stradbroke, in Hoxne.

Holt, Erpingham, except the sub-district of North Walsham, in Erpingham (see *North Walsham*).

King's Lynn, King's Lynn, Freebridge Lynn. The parishes of Anmer, Clenchwarton, Dersingham, Heacham, Holme next Runceton, Ingoldesthorpe, Sedgford, Shernborne, Snettisham, Terrington, St. Clement, Terrington St. John, Tilney All Saints, Tilney St. Lawrence, Tilney cum Islington, Tottenhill, Watlington, Wiggenhall St. Mary Magdalen, Wiggenhall St. Germain, Wiggenhall St. Peter, and Wormegay.

Little Walsingham, Walsingham, Docking, except the parishes of Anmer, Dersingham, Heacham, Ingoldesthorpe, Sedgford, Shernborne, and Snettisham (see *King's Lynn*).

North Walsham, Tunstead and Happening. The sub-district of North Walsham, in Erpingham, consisting of the parishes of North Walsham, Antingham, Gimingham, Gunton, Knapton, Repps North and South, Sidestrand, Suffield, Thorpe Market, Trimmingham, Trunch, and Mundley.

Norwich, Blofield, Henstead, Norwich, St. Faith. The sub-district of Loddon, in Loddon and Clavering, consisting of the parishes of Brooke, Burgh Apton, Heckingham, Howe, Yelverton, Alington, Ashby, Carleton, Chedgrave, Cluxton, Hardley, Hillington, Langley, Loddon, Sisland, and Thurton. The sub-district of Costessy, in Forehoe, consisting of the parishes of Barford, Barnham-Broom, Bawburgh, Bowthorpe, Brandon Parva, Carleton Forehoe, Colton, Costessy, Coston, Easton, Marlingford, Runhall, Well-borne, and Wramplingham.

Swaffham, Swaffham.

Thetford, Thetford.

Wymondham, Forehoe, except the sub-district of Costessy (see *Norwich*). The sub-district of Fornsett, in Depwade, consisting of the parishes of Ashwelthorpe, Aslacton, Bunwell, Carlton Rode, Fornsett St. Mary and St. Peter, Fundenhall, Hapton, Moulton Great, Tazolneston, and Tibbenham.

Great Yarmouth, East and West Flegg, Yarmouth. The sub-district of Gorleston, in Mutford and Lothingland, consisting of the parishes of Hopton, Gorleston with South Town, Fritton, Burgh Castle, Bradwell, and Belton.

NORTHAMPTONSHIRE.

Brackley, Brackley.

Daventry, Daventry.

Kettering, Kettering.

Northampton, Brixworth, Hardingstone, Northampton.

Oundle, Oundle.

Peterborough, Whittlesea, Peterborough, except the parish of Crowland (see *Spalding*).

Thrapstone, Thrapstone, the parishes of Shelton,

Dean, Tilbrook, Great Catworth, and Long Stow.

Towcester, Potterspury, except the parishes of

Calverton, Wolverton, and Stoney Stratford (see *Newport Pagnell*). Towcester.
Wellingborough, *Wellingborough*.

NORTHUMBERLAND.

Alnwick, *Alnwick*.
Belford, *Belford*.
Bellingham, *Bellingham*.
Berwick, *Berwick*.
Haltwhistle, except the parishes of Kirklaugh and Knaresdale (see *Alston*).
Hexham, *Hexham*, except the parish of Shotley and chapelry of Whittonstall (see *Shotley Bridge*).
Morpeth, *Morpeth*.
Newcastle, Castle Ward, *Newcastle*.
North Shields, *Tynemouth*.
Rothbury, *Rothbury*.
Wooler, *Glendale*.

NOTTINGHAMSHIRE.

Bingham, *Bingham*, except the parishes of Edwalton, Keyworth, Plumtree, and Tollerton (see *Nottingham*).
East Retford, *East Retford*.
Mansfield, *Mansfield*, except the sub-district of Blackwell (see *Alfreton*).
Newark, except the parishes of Barkston, Foston, Haugham, Marston, Allington East and West, Sedgbrook, and Syston (see *Grantham*).
Southwell, except the parishes of Boughton, Edwinstow, Kirtton, Rufford, Wellow, and Walesby (see *Worksop*).
Nottingham, *Nottingham*, *Radford*, *Basford*, except the parishes of Annesley with Felley, Heanor, Ilkestone, Kirkby in Ashfield, and Selstone (see *Alfreton and Belper*). The parishes of Attenborough, Brancote, Stapleford, Edwalton, Keyworth, Plumtree, and Tollerton.
Worksop, *Worksop*. The parishes of Boughton, Edwinstow, Kirtton, Rufford, Wellow, and Walesby.

OXFORDSHIRE.

Banbury, *Banbury*.
Bicester, *Bicester*.
Chipping Norton, *Chipping Norton*.
Oxford, *Oxford*, *Headington*. The sub-district of Cumner in Abingdon, except the parish of Bes-sensleigh and parish or chapelry of Wootton, consisting of the parishes of Cumner, Binsey, North Hinksey, South Hinksey, and Wytham, and precinct of Seacourt (see *Abingdon*).
Thame, *Thame*. The parish of Illmire.
Witney, *Witney*.
Woodstock, *Woodstock*.

RUTLANDSHIRE.

Oakham, *Oakham*. The parishes of Owston, Withcote, and the hamlet of Whatborough, in the parish of Tilton.
Uppingham, *Uppingham*. The parishes of Alexton, Tugby, Loddington, Skeffington. The chapelry of Goadby, in the parish of Billesden. The parochial chapelry of East Norton.

SHROPSHIRE.

Bishops Castle, *Clun*. The parish of Church Stoke and township of Aston.
Bridgenorth, *Bridgenorth*.
Clebury, *Clebury Mortimer*.
Drayton, *Drayton Market*.
Ludlow, *Ludlow*. The parishes of Acton Scott, Sibdon Carwood, and Wistanstow.
Madeley, *Madeley*, *Shifnal*.
Newport, *Newport*.
Oswestry, *Oswestry*, except the parish of Chirk

(see *Ruabon*). The sub-district of Ellesmere, in Ellesmere, consisting of the parishes of Hordley, Welshampton, and Ellesmere, except the township of Penley (see *Wrexham*).

Shrewsbury, *Atcham*, *Shrewsbury*, *Church Stretton*, except the parishes of Acton Scott, Sibdon Carwood, and Wistanstow (see *Ludlow*). The sub-district of Baschurch, in Ellesmere, consisting of the parishes of Petton, Baschurch, including chapelry of Little Ness, Middle, including the chapelry of Hadnall Ease, and parish of Great Ness.

Wem, *Wem* and *Whitchurch*, except the parishes of Ightfield and Whitchurch (see *Whitchurch*).

Wellington, *Wellington*.

Whitchurch, The parishes of Whitchurch and Ightfield. The parish of Hammer, and chapelry of Iscoyd. The townships of Agden, Bradley, Chidlow, Chorlton, Cuddington, Malpas, Newton by Malpas, Oldcastle, Overton, Shocklach Church, Shocklach Oviatt, Stockton, Whichaugh, Wigland, and the chapelry of Threapwood. The townships of Audlem, Bickley, Buerton, Dodcott with Wilkesley, Hampton, Macfen, Marbury with Quoioisley, Norbury, Tushingham with Grindley, and Wirswall.

SOMERSETSHIRE.

Bath, *Bath*. The sub-district of Newton in Keynsham, consisting of the parishes of Burnett, Compton-Dando, Corston, Marksbury, Newton St. Lo, Priston, Salford, and Stanton Prior.

Bridgewater, *Bridgewater*.

Chard, *Chard*, except the sub-district of Crewkerne and the parishes of Kingstone, Seavington St. Mary, Michael, Seavington St. Mary, Shepton Beauchamp, Stocklinch Ottersey, Stocklinch St. Magdalen, and West Dawlish (see *Crewkerne*).

Clutton, *Clutton*.

Crewkerne, The sub-district of Crewkerne, in Chard, consisting of the parishes of Chillington, Crewkerne, Cudworth, Dinnington, Hinton St. George, Lopen, Merriott, and Wayford. The parishes of Chiselborough, Middle Chincock, West Chincock, Haselbury Plucknett, Kingstone, North Perrot, Seavington St. Michael, Seavington St. Mary, South Petherton, Shepton Beauchamp, Stocklinch Ottersey, Stocklinch St. Magdalen, and West Dawlish. The sub-district of Misterton in Beaminster, consisting of the parishes of Cheddington, Misterton, Mosterton, Seaborough, and South Perrott.

Frome, *Frome*. The parishes of Batcombe, Downhead, East Cranmore, Stoke Lane, and Upton Noble.

Langport, *Langport*. The parish of Stoke St. Gregory and chapelry of Longload in the parish of Martock.

Taunton, *Taunton*, except the parish of Stoke St. Gregory (see *Langport*).

Wellington, *Wellington*.

Wells, *Wells*. Shepton Mallet, except the parishes of Batcombe, Downhead, East Cranmore, Stoke Lane, and Upton Noble (see *Frome*). The sub-districts of Axbridge and Winscombe, and Wedmore and Mark, in Axbridge, consisting of the parishes of Axbridge, Rowberrow, Winscombe, Christon, Compton Bishop, Cheddar, Shipham, Loxton, and Nyland-with-Batcombe, Wedmore, Chapel Allerton, Mark, Biddisham, Wear, and Badgworth.

Weston-super-Mare, *Axbridge*, except the sub-districts of Axbridge and Winscombe, Wedmore and Mark (see *Wells*).

Williton, *Williton*.

Wincanton, Wincanton.

Yeovil, Sherborne, Yeovil, except the parishes of Chiselborough, Middle Chinnock, West Chinnock, Haselbury Plucknett, North Perrott, South Pertherton, and chapelry of Longload (see Crewkerne and Langport).

STAFFORDSHIRE.

Burton-on-Trent, Burton, except the sub-district of Repton (see Derby).

Cheadle, Chendale. The parish of Croxden with Great Yut

Hanley, Stoke-on-Trent, except the townships of Clayton and Seabridge (see Newcastle-under-Lyme). Woolstanton and Burslem, except the township of Knutton (see Newcastle-under-Lyme). The parishes of Norton-on-the-Moors and Trent-ham.

Leek, Leek and Longnor, except the parish of Norton-on-the-Moors (see Hanley).

Lichfield, Lichfield, except the parishes of Rugeley, Longdon, Colton, Armitage-with-Hansacre, Pipe-Ridware, Hamstall-Ridware, and Mavesyn-Ridware (see Rugeley).

Newcastle-under-Lyme, Newcastle-under-Lyme. The townships of Clayton, Seabridge, and Knutton.

Oldbury, West Bromwich, except the sub-district of Handsworth and Perry Bar (see Birmingham). The chapelry of Smethwick in the parish of Harborne.

Rugeley, The parishes of Rugeley, Longdon, Colton, Armitage-with-Hansacre, Pipe-Ridware, Hamstall-Ridware, and Mavesyn-Ridware.

Stafford, Stafford. The sub-district of Penkridge, in Penkridge, consisting of the parish of Penkridge (excepting the chapelry of Stretton), the parish of Church Eaton, the chapelry of Baswich, in the parish of Baswich, the extra-parochial precinct of Teddesley-Hay, and the township of Kinvaston, in the parish of Wolverhampton (see Wolverhampton).

Stone, Stone, except the parish of Trentham (see Hanley).

Uttoxeter, Uttoxeter, except the parish of Croxden with Great Yate (see Cheadle).

Walsall, Walsall.

Wolverhampton, Wolverhampton and Seisdon. The sub-districts of Brewood and Cannock, in Penkridge, consisting of the parishes of Brewood, Lapley, Bushbury, Cannock, Shreshill, Norton Canes; the townships of Featherstone, Hather-ton, and Hilton, in the parish of Wolverhampton, the chapelry of Stretton, in the parish of Penkridge, and the extra-parochial precinct of Cheslyn-Hay.

SUFFOLK.

Berecles, Loddon and Clavering, except the sub-district of Loddon (see Norwich). Wangford, except the parishes of Flixton, Homersfield, All Saints South Elmham, St. Cross South Elmham, St. James South Elmham, St. Margaret South Elmham, St. Michael South Elmham, St. Nicholas South Elmham, St. Peter South Elmham (see Harleston).

Bury St. Edmunds, Bury, Thingoe. The sub-districts of Walsham-le-Willows in Stow, except the parish of Elmswell, consisting of Ashfield, Badwell-Ash, Hunston, Hinderclay, Langham, Norton, Rickingham Inferior, Stowlangtoft, Walsham-le-Willows, and Wattisfield (see Stow Market). The parish of Thurston.

Eye, Hartismere. The parishes of Diss, Scole, Thorpe Parva, Frenze, Thelveton, in the sub-district of Diss, in Depwade. The parishes of Denham, Stradbroke, and Hoxne, in the sub-district of Stradbroke in Hoxne.

Framlingham, Hoxne, except the sub-district of Stradbroke, (see Eye and Harleston). Plomesgate, except the sub-districts of Orford and Wickham Market (see Woodbridge).

Hadleigh, Cosford, except the parishes of Brettenham, Cockfield, Kettlebaston, Lavenham, Preston, and Thorpe Morieux (see Sudbury).

Halesworth, Blything.

Haughill, Risbridge. The parishes of Ridgowell and Stambourne.

Ipswich, Bosmere and Claydon, Ipswich, Sampford.

Lowestoft, Mutford and Lotheringland, except the sub-district of Gorleston (see Great Yarmouth).

Mildenhall, Mildenhall.

Stow Market, Stow, including the parish of Elmswell, but excepting all the rest of the sub-district of Walsham-le-Willows, and the parish of Thurston (see Bury St. Edmunds).

Sudbury, Sudbury. The parishes of Brettenham, Cockfield, Kettlebaston, Lavenham, Preston, and Thorpe Morieux.

Woodbridge, Woodbridge. The sub-districts of Orford and Wickham Market, in Plomesgate, consisting of the parishes of Wickham Market, Blaxhall, Chillesford, Iken, Orford, Sudbourne, Tunstall, Wantisden, Butley, Campsey-Ash, Eyke, Hucheston, Marlesford, and Rendlesham.

Chertsey, Chertsey. Staines, except the parishes of Cranford, Harlington, and Harmondsworth (see Uxbridge). The sub-district of Egham, in Windsor, comprising such parts of the parishes of Egham and Old Windsor as lie south and west of the road leading from the Thames, near Leatherlake House, up Priest Hill, through Bishops-gate and Hardimans, to the twenty-third mile stone on the Reading Road, and the whole of the parishes of Sunning Hill and Thorpe.

Croydon, Croydon.

Dorking, Dorking.

Epsom, Epsom.

Farnham, Farnborough, Farnham, except the parish of Bramshott (see Midhurst).

Godalming. The parish of Godalming. Hambleton, except the parishes of Shalford, St. Martha-on-the-Hill, and Womersh (see Guildford).

Guildford, Guildford, except the parish of Godalming (see Godalming). The parishes of Shalford, St. Martha-on-the-Hill, and Womersh.

Kingston, Kingston.

Reigate, Godstone, Reigate.

Wandsworth, Wandsworth and Clapham. Richmond.

SURREY METROPOLITAN DISTRICTS.

1. *Southwark, The district of the Southwark County Court of Surrey shall include the Superintendent Registrar's Districts of Rotherhithe, Bermondsey, Saint George Southwark, Saint Olave, and Saint Saviour, and so much of the Superintendent Registrar's districts of Newington and Lambeth as lies north of a line drawn from the River Thames at Lambeth-stairs, along the middle of Church-street, and Lambeth-road, to the Westminster-road, thence along the middle of the Westminster-road to Brook-street, thence along the middle of Brook-street and Lambeth-place and Garden-place, by the south side of the Fishmongers' Almshouses, to the High-road, Newington Butts, thence along the middle of the High-road, Newington Butts to Cross-street, thence along the middle of Cross-street to the Walworth-road, thence along the middle of the Walworth-road to East-street, thence along the middle of East-*

street, Richmond-terrace, Apollo-buildings, Prior-place, Sion-place, and East-lane, until it is cut by the boundary of Saint George, Southwark.

2. *Lambeth*, The district of the Lambeth County Court of Surrey shall include the Superintendent Registrar's district of Camberwell, and so much of the Superintendent Registrar's districts of Lambeth and Newington as is not in the district of the Southwark County Court of Surrey, and so much of the Superintendent Registrar's district of Greenwich as lies west of the Croydon Railway.

SUSSEX.

Arundel, Worthing, except the sub-district of Broadwater, and excepting also the parishes of Angmering, Clapham, East Preston, Goring, Kingston, Patching, and West Ferring (see *Worthing*).

Brighton, Brighton, Steyning, except the parishes of Buttolphs, Coombs and Sompthing. (see *Worthing*). The parishes of Ovingdean and Rottingdean.

Chichester, Westbourne, West Hampnett. Chichester, including the parish of Slindon, but excepting all the rest of the sub-district of Sutton (see *Petworth*).

Cuckfield, Cuckfield. The parish of Wivelsfield.

East Grinstead, East Grinstead.

Hastings, Hastings, Battle, Rye.

Horsham, Horsham.

Lewes, Eastbourne, Hailsham, Lewes, except the parishes of Wivelsfield, Ovingdean, and Rottingdean (see *Cuckfield* and *Brighton*). Uckfield, except the parishes of Mayfield and Rotherfield (see *Tonbridge Wells*).

Midhurst, Midhurst, except the parishes of Selham, Tillington, Lodsworth, Lurgashall, and North Chapel (see *Petworth*). The parish of Bramshott.

Petworth, Petworth, Thakeham, except the parish of Finden (see *Worthing*). The sub-district of Sutton, in Chichester, except the parish of Slindon, consisting of the parishes of Egdean, Fittleworth, Coates, Duncton, Burton, Barlavington, Sutton, Bignor, Bury, Greatham, Hleyshott, and Tything of West Burton (see *Chichester*). The parishes of Selham, Tillington, Lodsworth, Lurgashall, and North Chapel.

Worthing, the sub-district of Broadwater, in Worthing, consisting of the parishes of Broadwater, Durrington, Heene, Lancing, and West Tarring. The parishes of Buttolphs, Coombs, and Sompthing. The parishes of Angmering, Clapham, East Preston, Finden, Goring, Kingston, Patching, West Ferring.

WARWICKSHIRE.

Alcester, Alcester, except the parish of Ipsley (see *Redditch*).

Atherstone, Atherstone, except the parish of Ansley (see *Nuneaton*).

Birmingham, Aston, Birmingham. Kingsnorton, except the parish of Beoley and Chapelry of Smethwick (see *West Bromwich* and *Redditch*). The sub-district of Coleshill, in Meriden, except the parish of Church Bickenhill, consisting of the parishes of Coleshill, Lea Marston, Maxstoke, Shustoke, Sheldon, Upper Whitacre, and Lower Whitacre, (see *Solihull*). The sub-district of Handsworth and Perry Bar, in West Bromwich, consisting of the parish of Handsworth.

Coventry, Coventry, Foleshill, except the parishes of Bedworth and Wolvey (see *Hinckley* and *Nuneaton*). The sub-district of Meriden, in Meriden, except the parish of Hampton in Arden, consisting of the parishes of Berkeswell, Meriden, Packington Great and Little, Corley, Fillongley, and

Allesley, and the chapelry of Coundon in the parish of Holy Trinity (see *Solihull*).

Nuneaton, Nuneaton. The parishes of Ansley and Bedworth.

Rugby, Rugby.

Solihull, Solihull. The parishes of Church Bickenhill, and Hampton in Arden.

Southam, Southam.

Stratford, Stratford, except the sub-district of Wootton Waven (see *Warwick*).

Tamworth, Tamworth.

Warwick, Warwick. The sub-district of Wootton Waven, Beaudesert, Preston-Baggott, Claverdon, Bearley, and Wolverton, and the hamlet of Langley.

WESTMORELAND.

Ambleside, The sub-district of Ambleside, in Kendal, consisting of the parishes of Grasmere and Windermere, the townships of Crook and Hugil, and the chapelries of Kentmere, Stavelynether and Over, in the parish of Kendal. The sub-district of Hawkshead, in Ulverstone, consisting of the parish of Hawkshead, and the chapelries of Church Conistone and Torver, in the parish of Ulverstone.

Appleby, East Ward.

Kirkby Kendal, Kendal, except the sub-districts of Ambleside and Kirkby Lonsdale (see *Ambleside* and *Kirkby Lonsdale*).

Kirkby Lonsdale, Sedburgh. The sub-district of Kirkby Lonsdale, in Kendal, consisting of the parish of Kirkby Lonsdale, except the chapelry of Firbank, the townships of Holme, Burton in Kendal, and Preston Patrick, in the parish of Burton in Kendal, the township of Farleton, in the parish of Beetham, and the township of Preston Richard, in the parish of Heversham. The sub-district of Bentham in Settle, consisting of the parishes of Bentham, and Thornton in Lonsdale, and the township of Clapham-cum-Newby, in the parish of Clapham. The chapelry of Arkholme with Cawood, the townships of Melling, with Wrayton and Wennington, the parish of Whittington.

WILTSHIRE.

Bradford, Bradford, except the parish of Broughton Gifford and chapelry of Atworth (see *Melksham*).

Calne, Calne.

Chippenham, Chippenham.

Devizes, Devizes.

Malmesbury, Malmesbury, Tetbury, except the parishes of Kingscote, Newington Bagpath, and Ozleworth (see *Dursley*).

Marlborough, Marlborough, Pewsey.

Melksham, Melksham, except the parishes of Hilperton and Trowbridge (see *Trowbridge*). The parish of Broughton Gifford and chapelry of Atworth.

Salisbury, Alderbury, Amesbury, Salisbury, Wilton. Swindon, Cricklade and Wootton Bassett, Highworth and Swindon.

Trowbridge, the parishes of Hilperton and Trowbridge.

Warminster, Warminster.

Westbury, Westbury and Whorwelsdon.

WORCESTERSHIRE.

Bromsgrove, Bromsgrove, except the parishes of Alvechurch, Coston Hackett, and Tardebigg (see *Redditch*).

Droitwich, Droitwich, except the parish of Hartlebury and hamlet of Upper Mitton (see *Kidderminster*).

Dudley, Dudley.
Evesham, Evesham.
Kidderminster, Kidderminster. The parish of Hart-
 lebury and hamlet of Upper Mitton.
Pershore, Pershore.
Redditch, The parishes of Tardebigg, Ipsley, Beoley,
 Alvechurch, and Coston Hackett.
Shipston, Shipston.
Stourbridge, Stourbridge.
Tenbury, Tenbury.
Upton, Upton-on-Severn.
Worcester, Worcester, Martley.

YORKSHIRE (EAST RIDING).

Beverley, *Beverley*. The sub-districts of Brandsbur-
 ton and Hornsea, in Skirlaugh, consisting of the
 parishes of Atwick, Catwick, Goxhill, Hornsea,
 Brandsburton, Mappleton (except the township of
 Great Cowden), Bewholme, and Siggleshorpe,
 the townships of Dunnington, in the parish of
 Beeford, of Hempholme, in the parish of Leven,
 and of Bonwick, in the parish of Skipsea.
Bridlington, Bridlington.
Great Driffield, Driffield.
Hedon, Patrington. The parish of Hedon and
 township of Preston. The sub-district of Hum-
 bleton, in Skirlaugh, consisting of the parishes of
 Humbleton and Sproatley, and the townships of
 Garton-with-Grimston, Lelley, and Wyton.
Howden, Howden.
Kingston-on-Hull, Kingston-on-Hull. Sculcoates,
 except the parish of Hedon and township of Pres-
 ton (see *Hedon*). Skirlaugh, except the sub-
 districts of Brandsburton, Humbleton and Horn-
 sea (see *Beverley* and *Hedon*). Pocklington.

YORKSHIRE (WEST RIDING).

Barnsley, Ecclesfield. The sub-districts of Penis-
 tone and Wortley in Wortley, consisting of the
 townships of Gunthwaite, Ingbirchworth, Lang-
 sett, Hunshelf, Hoylandswayne, Penistone, Ox-
 spring, Thurlstone, Thurgoland, Wortley, Tan-
 kersley.
Boston, Tadcaster. The townships of Linton and
 Wetherby.
Bradford, Bradford.
Dewsbury, Dewsbury.
Doncaster, Doncaster.
Goole, Goole.
Halifax, Halifax.
Holmfirth, The townships of Austonley, Holme,
 Honley, Nether Thong, and Upper Thong, in the
 parish of Almondbury. The parish of Kirkbur-
 ton, except the townships of Kirkburton and
 Shelley (see *Huddersfield*).
Huddersfield, Huddersfield, including the townships
 of Kirkburton and Shelley, but excepting the rest
 of the parish of Kirkburton, and excepting also
 the townships of Austonley, Holme, Honley,
 Nether Thong, Upper Thong, in the parish of
 Almondbury (see *Holmfirth*).
Keighley, Keighley.
Knaresborough, Knaresborough, except the town-
 ships of Linton and Wetherby (see *Boston*).
Leeds, Leeds, Hunslet.
Olley, Olley.
Pontefract, Pontefract.
Ripon, Pateley Bridge, Ripon.
Rotherham, Rotherham.
Saddleworth, Saddleworth.
Selby, Selby.
Settle, Settle, except the sub-district of Bentham
 (see *Kirkby Lonsdale*).
Skipton, Skipton.
Thorne, Thorne.

Todmorden, Todmorden.
Wakefield, Wakefield.

YORKSHIRE (NORTH RIDING).

Easingwold, Easingwold.
Helmsley, Helmsley.
Leyburn, Askrigg, Bedale, Leyburn.
New Malton, Malton, Pickering.
Northallerton, Northallerton.
Richmond, Reeth, Richmond.
Scarborough, Scarborough.
Stokesley, Stokesley, Guisborough.
Thirsk, Thirsk.
Whitby, Whitby
York, York.

ANGLESEY.

Llangefni, Anglesey.* The sub-district of Beau-
 maris, in Bangor and Beaumaris, being all the re-
 maining part of the Isle of Anglesey.

BRECKNOCKSHIRE.

Brecknock, Brecknock.
Builth, Builth.
Crickhowell, Crickhowell.
Hay, Hay.

CAERMARTHENSHIRE.

Caermarthen, Caermarthen.
Llandeilo-fawr, Llandeilo-fawr.
Llandovery, Llandovery.
Llanelli, Llanelli.
Newcastle in Emlyn, Newcastle in Emlyn.

CARNARVONSHIRE.

Bangor, Bangor and Beaumaris, except the sub-
 district of Beaumaris (see *Llangefni*).
Carnarvon, Carnarvon.
Conway, Conway.
Portmadoc, Festiniog
Pwllheli, Pwllheli.

CARDIGANSHIRE.

Aberayron, Aberayron.
Aberystwith, Aberystwith.
Cardigan, Cardigan.
Lampeter, Lampeter, Tregaron.

DENBIGHSHIRE.

Denbigh, The sub-district of Denbigh in St. Asaph,
 consisting of the parishes of Denbigh, Hewllan,
 Llansannan, and Llanellydd. The parishes of
 Rodfary and Llanfairtalhaiarn. The parishes of
 Nantglyn, Llanrhaiadr, Llandyrnog, and Llan-
 gwyfan.
Llanrwst, Llanrwst.
Ruabon, The sub-district of Ruabon, in Wrexham,
 consisting of the parishes of Ruabon and Erbe-
 stock. The parish of Chirk, in Oswestry. The
 parish of Llangollen, in Corwen.
Ruthin, Ruthin, except the parishes of Nantglyn,
 Llanrhaiadr, Llandyrnog and Llangwyfan (see
Denbigh).
Wrexham, Wrexham, except the sub-district of Ru-
 abon, and the townships of Agden, Bradley, Chid-
 low, Cheriton, Cuddington, Malpas, Newton by
 Malpas, Oldcastle, Overton, Shocklach Church,
 Shocklach Oviatt, Stockton, Whitchaugh, Wig-
 land, and the chapelry of Threapwood (see *Ruabon*
 and *Whitchurch*). The sub-district of Overton,
 in Ellesmere, consisting of the parish of Overton
 and township of Penley.

FLINTSHIRE.

Holywell, Holywell, except the sub-districts of
 Mold and Flint, (see *Mold*).
Mold, The sub-districts of Mold and Flint, in Holy-

well, consisting of the parishes of Mold, Cilcen Flint, Halkin, Northop, and the chapelry of Nerquis.

St. Asaph, St. Asaph, except the sub-district of Denbigh, and the parishes Bodferry and Llanfairtalhaiarn (see *Denbigh*).

GLAMORGANSHIRE.

Bridgend, Bridgend and *Cowbridge*.

Cardiff, Cardiff.

Merthyr Tydfil, Merthyr.

Neath, Neath.

Swansea, Swansea.

MERIONETHSHIRE.

Bala, Bala.

Corwen, Corwen, except the parish of Llangollen (see *Ruabon*).

Dolgelly, Dolgelly.

MONTGOMERYSHIRE.

Llanfyllin, Llanfyllin, except the parishes of Llanfaircaereinion and Llangyniew (see *Welchpool*).

Llanidloes, The sub-districts of Upper and Lower Llanidloes in Newtown and Llanidloes, consisting of the parishes of Llanidloes, Llangirrigg, and Tref Eglwys.

Machynlleth, Machynlleth.

Newtown, Newtown and Llanidloes, except the sub-districts of Upper and Lower Llanidloes (see *Llanidloes*). The parishes of Llandyssil and Llanmerewig.

Welchpool, Montgomery, except the parishes of Llandyssil, Llanmerewig, and Church Stoke and township of Aston (see *Newtown and Bishops-castle*). The parishes of Llanfaircaereinion and Llangyniew.

PEMBROKESHIRE.

Haverfordwest, Haverfordwest.

Narberth, Narberth.

Pembroke, Pembroke.

RADNOR.

Presteigne, Knighton. The sub-district of Presteigne, in Presteigne and Kington, consisting of the parishes of Byton, Cascob, Upper Kinsham, Knill, Lingen, Norton, Pilleth, Presteigne, and Whitton.

Rhaiadr, Rhaiadr.

WM. L. BATHURST.

TESTIMONIAL TO MR. ANDERTON.

WE always rejoice in the opportunity of making known any honour or distinction conferred on members of the profession, and therefore record the following testimonial regarding the valuable services rendered to the Irish Society by *Mr. Anderton*, the solicitor. We the more gladly notice this public reward of honourable exertion on account of the services long ago rendered to the profession when *Mr. Anderton* was Secretary of the Metropolitan Law Society.

"At a court of the Honourable the Irish Society, held in the Irish Chamber, Guildhall, London, on Wednesday, the 10th day of February, 1847,

"*JOHN HUMPHREY, Esq., Alderman, M. P., Governor*, in the chair,

"It was unanimously resolved, That this society desire to acknowledge the deep sense they entertain of the value of the services rendered by their respected colleague *James Anderton, Esq.*, in the honourable and responsible situation of Deputy-Governor, during the past year, for the valuable assistance which he has afforded in their deliberations, and for his courteous and impartial demeanour when presiding over them, and upon all occasions. The Society desire especially to recognise the judicious and discriminating attention displayed by him whilst visiting their estates in the county of Londonderry, with a deputation of the Society, and for the able report presented, with reference to this important portion of their trust, for his practical suggestion for the improvement of the Society's estates, the prosperity of their tenantry, and of the province of Ulster in general.

"The society cannot omit noticing with much approbation, the able, prudent, and disinterested co-operation of the Deputy-Governor, in the conduct of a protracted, difficult, and costly litigation with the Bishop of Derry, the termination of which was greatly facilitated by his advice and assistance; and the Society desire to offer to him their best wishes for a long continuance in his present career of public usefulness and private estimation.

"*JOHN E. DAVIES, Secretary.*"

ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

Courts of Common Law.

FOUNDATIONS OF ACTION AND PRINCIPLES OF THE COMMON LAW.

AGENT.

Agent of agent.—No priority with principal.—*A.* being defendant in an action brought by *B.*, paid the debt and costs to his own country attorney for transmission to *B.* The attorney sent a cheque, exceeding the amount, to his own town agent, directing him to pay the debt and costs out of it. The agent acknowledged the receipt by letter to the country attorney, and therein promised to apply the money as directed; but he retained it in reduction of a debt due to him from the attorney.

Held, that there was no sufficient priority to support an action for money had and received by *A.* against the agent. *Cobb v. Becke*, 6 Q. B. 930.

Cases cited in the judgment: *Lilly v. Hays*, 5 A. & E. 548; *Williams v. Everett*, 14 East, 582; *Baron v. Husband*, 4 B. & Ad. 611; *Howell v. Batt*, 5 B. & Ad. 504; *Moody v. Spencer*, 2 D. & K. 6.

AGREEMENT.

See *Lease*.

AMENDS, TENDER OF.

See *Damage Feasant*.

BANKRUPT.

See *Contract*.

BARON AND FEME.

1. *Acts of wife.*—*Surrender by attorney.*—In the manor of *L.*, in Cumberland, the custom of tenure, (called tenant-right), is that the freehold is in the lord, and the tenant holds of the lord, to him and his heirs for ever, according to the custom of the manor, at fixed rents and services. A fine is paid on every admittance. On alienation, a deed of bargain and sale is executed by the alienor to the alienee, which the alienor brings into court, whereupon the steward, by proclamation, calls upon any one to come forward who can say why the alienor shall not surrender into the hands of the lord; he then says to the alienor, "you surrender into the hands of the lord, to the use of the alienee, his heirs and assigns; are you content to make this surrender?" On the alienor assenting, the steward, by proclamation, calls on any one to come forward who can say why the alienee should not be admitted tenant. Then the steward says to the alienee, "In the name of the lord I admit you tenant, to hold to you, and your heirs and assigns, according to the custom." The jury then present the alienee as tenant on the alienation of the alienor, to hold to him, his heirs and assigns, according to the custom: the bargain and sale recites a licence from the lord to alien, which, after the admittance, is indorsed on the deed of bargain and sale; the licence is a notice of course, and a fixed sum is paid for it. When a married woman conveys, she and her husband execute the bargain and sale in court; the wife is then separately examined, and after that, the proceedings go on as before stated: or the husband and wife may, out of court, execute the bargain and sale, and surrender, before the lord, his steward or deputy, who examines the wife separately. Surrenders out of court may be made by or to the parties themselves, or their attorneys: the surrender may be made to the lord himself, or his steward or deputy. In all cases the surrender is stated to be made to the lord; and the admittance afterwards may take place either in or out of court. The surrender and admittance are in all cases entered on the rolls.

A married woman, who before her marriage had been admitted as tenant, executed, jointly with her husband, out of court, a bargain and sale being previously examined by the deputy steward. By the deed, the husband and wife "granted, bargained, sold, aliened, surrendered, set over, and confirmed" (with the lord's licence) to the alienee, according to custom; then followed a clause, by which the husband and wife "do, and each of them doth, hereby, severally and respectively ordain, constitute, and appoint 'J.' their and each of their several and respective attorney, for them, and in each or either of their several names," at the next or other court, to surrender into the hands of the lord according to the custom.

At a court, holden after the wife's death, but

in the life of her husband, *J.* surrendered to the lord; and the alienee was admitted. The entry was, that the husband and wife by *J.*, surrendered to the lord for the use of the alienee.

On a case stating the above facts: *Held*, 1. That the surrender to the lord was an essential part of the alienation; and that the bargain and sale, without such surrender, did not pass the estate.

Per Lord *Denman*, C. J., especially as the case concluded by stating the question to be, whether the deed of bargain and sale, and the surrender and admittance, were sufficient, complete and valid, as against the heir.

2. That *J.*, as attorney for the husband, had no power to surrender.

3. That assuming *J.* to be lawfully constituted attorney for the wife, (and, per *Patteson*, J., *semble*, he was not), the power expired by her death, and the surrender was therefore void. *Graham v. Jackson*, 6 Q. B. 811.

Cases cited in the judgment: *Bingham v. Woodgate*, 1 Russ. & M. 32, 750; *Doe d. Earl of Carlisle v. Towns*, 2 B. & Ad. 585.

2. *Wife's property.*—*Promissory note.*—A *feme sole*, payee of a promissory note, payable with interest, married, and her husband survived her: *Held*, in an action on the note by her administrator,—1. That the note did not become the property of the husband, but passed to her administrator, though the husband had received the interest during her life; for that he did thereby reduce the chose in action into possession.

2. That the payment of such interest, in the wife's life, to the husband, within six years before action brought, must be considered as made to him in the character of agent to the wife, and was an answer to a plea of the Statute of Limitations.

3. That, under stat. 6 & 7 Vict. c. 85, s. 1, the husband was a competent witness in such action to prove the payment of interest. *Hart v. Stephens*, 6 Q. B. 937.

Cases cited in the judgment: *Richards v. Richards*, 2 B. & Ad. 447; *Gaters v. Madeley*, 6 M. & W. 423.

BILL OF EXCHANGE.

See *Estoppel*.

BYE-LAW.

The governors were empowered by the charter to make bye-laws, and, in 1748, they enacted a bye-law, requiring certain qualifications in the future master, and ordaining, (for the encouragement of well-qualified persons to accept the office,) that no Master should thereafter be displaced, removed, or removable from the office, unless some sufficient cause of complaint should be exhibited in writing against such master, and signed by the governors and their successors, and the same cause of complaint be first allowed of and declared by them to be a sufficient cause.

Held by both courts that the governors had no right then to limit the discretion given by

the charter, and that the bye-law was void. *Reg. v. Governors of Darlington School*, 6 Q. B. 682.

And see *Charter*.

CHARTER.

Removal of Schoolmaster without hearing in defence.—Queen Elizabeth, by charter, founded and endowed a grammar school at D., and incorporated certain persons and their successors as governors, and granted to them, for ever, full power and authority from time to time of electing, nominating and appointing a master and usher of the said school so often as to them and their successors, or the major part of them, occasion them moving thereto, should appear, and of removing the same master or usher from the said school, according to their sound discretion, and of placing or appointing other or others more fit in their stead or steads.

Held, by the Court of Queen's Bench, and by the Court of Exchequer Chamber, affirming their judgment, that, by the terms of the charter, the governors might, in their discretion, remove a master without summons or hearing, and although no charge against him had been exhibited to them. *Reg. v. Governors of Darlington School*, 6 Q. B. 682.

Case cited in the judgment: *Rex v. Mayor of Stratford-on-Avon*, 1 Lev. 291.

And see *Bye-Law*.

CHARTER-PARTY.

1. *Construction.*—By a charter-party the owner of the ship agreed that she should proceed direct to Ichaboe, and there load a full and complete cargo of guano, by the ship's boats and tackle, and by the labour of the crew, and being so loaded, should proceed therewith to Cork or Falmouth, &c., and deliver the same, on being paid freight at 4l. 5s. per ton, restraint of princes and rulers, the acts of God and the Queen's enemies, and perils of navigation, always excepted. Twenty-one working days to be allowed to the charterers, if the ship were not sooner discharged, at the port of unloading. The charterers to ship bags and other materials requisite for loading the ship, and to supply the stores for the vessel at cash prices for the voyage, and to deduct the amount from the balance of freight; but in the event of the vessel being lost, or any other unforeseen causes preventing the completion of the charter-party, the owner agreed to pay the charterers the amount of their disbursements for such stores.

To a declaration on this charter-party, alleging as a breach of it, that the defendant, the shipowner, did not load a full and complete cargo of guano on board the ship at Ichaboe, he pleaded a plea, which stated in substance, that he was prevented from doing so by an unforeseen cause, viz., that on the arrival of the ship at Ichaboe, and within a reasonable time afterwards, no guano was to be found there; and that he paid to the plaintiffs the amount of their disbursements for stores for the vessel.

Held, that this plea was bad in substance,

for that the fact of no guano being to be found was not such an "unforeseen cause preventing the completion of the charter-party," as entitled the defendant to pay the amount of the disbursements, and that the charter-party was at an end, but that he was nevertheless bound by his positive contract to load a full cargo. *Hills v. Sughrue*, 15 M. & W. 253.

Case cited in the judgment: *Marquis of Bute v. Thompson*, 13 M. & W. 487.

2. *Freight.*—A charter party stipulated that the ship should proceed from London to Bombay, and, being there loaded, should proceed to London, and discharge in any dock the freighters might appoint, and deliver her cargo "on being paid freight at and after the rate of 4l. per ton," &c. By a subsequent clause it was stipulated, that the freight was to be paid "on unloading and right delivery of the cargo, in cash, two months after the vessel's inward report at the custom house." *Held*, that upon the construction of these stipulations taken together, the freight was not payable until two months after the inward report; and the shipowner had not, after the cargo was discharged pursuant to the charter party, any lien thereon for the freight. *Alsager v. St. Katherine's Dock Company*, 14 M. & W. 794.

CONSIDERATION.

See *Guarantee*.

CONTRACT.

1. *Construction.*—B. engaged to supply an engine and boilers for a steam vessel of A., "in conformity to the drawings and specification furnished by C.; the engine to be got up under the superintendence of C., and, when approved by him at the works, to be delivered by B. into the East India Docks, when B.'s liability ceases. One of the terms contained in the specification was, that the engine, &c., should be completed *within two months*: *Held*, that time was of the essence of the contract, and that B. was liable to an action at the suit of A. for not delivering the engine and boilers within the two months. *Wimshurst v. Deeley*, 2 C. B. 253.

2. *Construction.*—*Security before delivery of goods.*—The plaintiffs contracted to fit up for the defendant a brewery at the house of a third person, the whole to be fixed complete for a certain sum, nothing being said about the time or mode of payment. When a portion of the work was done, the plaintiffs refused to complete it without security, which the defendant refused to give. In an action against the defendant for not permitting the plaintiffs to proceed with or complete the work, or paying for what was done, it was left to the jury to say by whose default the work was stopped. The jury having found a verdict for the defendant, the court declined to interfere. *Pontifex v. Wilkinson*, 2 C. B. 349.

3. *Goods sold and delivered.*—The defendant ordered of the plaintiff two dozen of port and two dozen of sherry, with the understanding, that if it were not approved, he should return

it. The plaintiff sent him *four* dozen of port and four dozen of sherry. The defendant was not satisfied with its quality, and returned the whole, except one bottle of the port and one dozen of the sherry, with a letter to the plaintiff, in which he stated that his order was for two dozen of each kind of wine; that he should not have refused to keep the four dozen if the quality had suited him; but that he returned the four dozen of port, minus one bottle which he had tasted, and three dozen of the sherry: *Held*, that the defendant was liable only for the price of the wine he actually kept. *Hart v. Mills*, 15 M. & W. 85.

4. *Assignees of bankrupt.*—*Amount of damages.*—*B.*, being indebted to the defendant in the sum of 500*l.*, for the price of goods sold to him, and being pressed for the part payment of the debt, handed to the defendant a bill of exchange, drawn by himself, for 600*l.*, which the defendant agreed to discount, on the terms of retaining to his own use the sum of 100*l.* and the discount, and paying over the difference to *B.*; he, however, retained the bill, and paid not part of the proceeds over to *B.* *B.* shortly afterwards became bankrupt; *Held*, that his assignees were entitled to recover from the defendant the full amount of the bill, minus the 100*l.*, and such discount as the jury should find to be receivable by the defendant. *Alder v. Krichley*, 15 M. & W. 117.

Case cited in the judgment: *Hill v. Smith*, 12 M. & W. 618.

5. *Damages, non delivery of shares.*—In an action for the non-delivery of shares on a given day, pursuant to contract, the proper measure of damages is the difference between the contract price and the market price on the day when the contract was broken. *Shaw v. Holland*, 15 M. & W., 136.

Case cited in the judgment: *Gainsford v. Carroll*, 2 B. & C. 624.

CONSPIRACY.

Compound felony.—*Inciting a third person to bring a civil action without probable cause.*—One joint tort-feasor cannot maintain an action against another, for an injury arising out of the illegal transaction in which they have been jointly engaged.

A declaration in case stated that *B.* (the defendant) had charged *C.* with embezzlement; that it was agreed between *B.* and *A.* (the plaintiff) that *B.* should abstain from prosecuting *C.*; and that, in consideration thereof, *C.* should draw, and *A.* should accept, a bill of exchange, and that *C.* should indorse the same to the defendant. The declaration then went on to aver, that a bill was drawn, accepted, and indorsed to *B.*, pursuant to this corrupt and illegal agreement; that *B.*, well knowing the illegal nature of the transaction, and that *A.* was not liable at law to pay the amount of the bill, and that there was no reasonable or probable cause for suing him thereon, conspired with *D.*, a pauper, that the bill should be in bond to *D.*, and that *D.* should

sue *A.* upon the bill, for the sole benefit of *B.*; and that an action was accordingly brought by *D.* against *A.* in the Exchequer, in which *A.* obtained a verdict, on the ground of the illegality of the consideration for the acceptance, but was unable to obtain his costs in consequence of the insolvency of *D.*: *Held*, that, inasmuch as *A.* could not make out his case except through the illegal transaction to which he himself was a party, the action would not lie: *Seemle*, that no action will lie against a party for inciting a third person to bring a civil action against the plaintiff without reasonable or probable cause. *Fitz v. Nicholls*, 2 C. B. 501.

Case cited in the judgment: *Simpson v. Bloss*, 7 Taunt., 246.

COPYHOLDS.

1. *Term of admittance—how operative.*—By the written customs of the manor of Hackney, (confirmed by stat. 21 Jac. 1, c. 6, private,) every person to whose use lands are surrendered "ought to come within three years" after the surrender is presented, and be admitted (sect. 34): *Held*, that this custom was only for the benefit of the lord, who might waive it, and grant a valid admittance after the expiration of the three years.

Therefore, where *P.*, copyholder of the manor, surrendered to the use of *W.*, who was admitted more than three years after presentation of the surrender: *Held*, that *W.*, after admittance, might maintain ejectment against *P.* and all claiming under her. *Doe d. Warwick v. Coombes*, 6 Q. B. 535.

2. *Seizure quousque.*—*Refusal to admit heir.*—*Suggested right in other parties.*—The heir of copyhold lands not appearing on proclamation, the lord seized quousque. Afterwards the heir claimed; and the lord declining to admit him, on the supposition that another party had title, the heir obtained a rule *nisi* for a mandamus to admit. On discussion of the rule, it was ordered, by consent of the heir and lord (no other party appearing), that an ejectment should be brought to try the right, the heir being lessor of the plaintiff, and the lord defendant; and that the rule for a mandamus should be enlarged in the meantime; and the parties agreed to waive technical objections on the trial.

The heir proved title; and the defendant put in a will of the ancestor, devising the lands to the London Annuity Society. No further evidence being given for the defendant, the judge left the case to the jury on the proof of title in the lessor of the plaintiff; and the plaintiff had a verdict.

On motion to enter a non-suit, cause being shown at the same time against the rule *nisi* for a mandamus: *Held*, that plaintiff was entitled to recover, for that the lord, though he had seized quousque, could not hold against the heir on the mere proof of a devise to parties who had not claimed admittance, and of whom nothing was known. Rule for a non-suit discharged. Rule for a mandamus made abso-

lute. *Doe d. Le Keux v. Harrison*, 6 Q. B. 631.

COPYRIGHT.

Of Books.—In a case for infringement of copyright of a book, intitled "Evening Devotions, &c., from the German of C. C. Sturm," the defendants pleaded that Sturm had written religious works in the German language, which had been translated into English, and were much valued; that the plaintiff employed one H. to write the book mentioned in the declaration, and, with intent to defraud and deceive the public, and to make them believe that the book was a translation of an original book written by Sturm, fraudulently published it as and for a translation of an original work written in German by Sturm; and that he published with the book a false and fraudulent preface, the object of which was, to induce the public to believe that the work was really a translation of a work written by Sturm: *Held*, on general demurrer, that the matters stated in the plea were sufficient to negative the existence of a valid copyright in the plaintiffs, and consequently to preclude him from maintaining any action for piracy. *Wright v. Tallis*, 1 C. B. 893.

COVENANT.

Construction.—In covenant, the declaration alleged, that the defendants, the Great Western Railway Company, demised to the plaintiffs certain refreshment-rooms at Swindon for 99 years, at the annual rent of 1*d.*; that the plaintiffs covenanted (*inter alia*) to keep the premises in repair, and not to carry on there any other business than that of the refreshment-rooms; and that the defendants covenanted with the plaintiffs that, in case the Swindon station should be disused as the regular and general place of stoppage for refreshment of passengers, they would purchase the buildings of the plaintiffs, on the terms therein mentioned; that it was by the said indenture declared to be the intention of the defendants, and the understanding of the plaintiffs, that in consequence of the outlay to be incurred by the plaintiffs in erecting the refreshment-rooms, the defendants should give every facility to the plaintiffs for enabling them to obtain an adequate return by the profits of the rooms, and that all trains carrying passengers, not goods trains, or to be sent express for special purposes, which should pass the Swindon station, should, save in case of emergency or unusual delay arising from accident, stop there for refreshment of passengers, for a reasonable period of about ten minutes; and that the defendants covenanted with the plaintiffs not to do any act which should have an effect contrary to the above intention. The breach alleged was, that the defendants, whilst the Swindon station was used as the regular and general place of stoppage for the refreshment of passengers, did divers acts which had an effect, and were contrary to the intention of the defendants in the said indenture; that is to say, they caused divers trains containing pas-

sengers, not being trains sent express, &c., to pass the Swindon station without stopping there for refreshment of the passengers for a reasonable period of ten minutes; and the defendants caused several trains to stop, and the same did stop at Swindon for a short and unreasonable time, to wit, for one minute and no more, the said period of time not being sufficient to enable the said passengers to obtain refreshment. The defendants set out the deed on oyer, which corresponded with the statement of it in the declaration, except that the terms of the covenant declared on were, that the defendants engaged not to do any act which should have an effect contrary to the above intention.

Held, on demurrer, that this amounted to a covenant on the part of the company not to do any act to prevent the trains from stopping at Swindon, so long as it was used as the regular refreshment station; and, secondly, that a good breach of that covenant was alleged in the declaration. *Rigby v. Great Western Railway Company*, 14 M. & W. 811.

See *Landlord and Tenant*.

CUSTOM.

See *Fishery*.

DAMAGE FEASANT.

Tender of amends.—*Excessive demand.*—Where cattle are distrained as damage feasant, the owner cannot, without tendering amends, pay, under protest, an excessive sum demanded for damage, and recover the amount as money had and received to his use.

If a sufficient tender is made before the distress, the remedy is replevin or trespass; if after the distress, (before the impounding), *detinue*. *Gulliver v. Cosens*, 1 C. B. 788.

Cases cited in the judgment: *Six Carpenters' case*, 8 Co. Rep. 147; *Lindon v. Hooper*, Cowp. 414.

DEED.

Construction.—*Future growing crops.*—The tenant for years of a farm, being indebted to his landlord, assigned to him, by deed, all his household goods, live stock, hay, and corn, as well in stock as then growing upon the farm, utensils and implements of husbandry, and also all his tenant right and interest yet to come and unexpired in and to the farm and premises; to hold the said goods, cattle, chattels, tenant-right, effects, and things to the landlord, in trust to sell, and thereout to pay the debt, and to pay over the surplus to the tenant; and the tenant thereby granted to the landlord license and authority at any time to enter upon the farm, and take, and carry away, and sell the goods, &c., thereby assigned:—*Held*, that under this assignment the tenant's interest in crops grown in future years of the term passed to the landlord. *Petch v. Tutin*, 15 M. & W. 110.

Cases cited in the judgment: *Grantham v. Hawley*, Hob. 132.

DEVISE.

1. "Issue law" construed.—*Disentailing*

deed.—A testator devised lands to his grandson, *G. D.*, to hold the same unto and to the use of the said *G. D.*, for the term of his natural life; and from his decease, unto and to the use of all and every the *lawful issue* of the said *G. D.*, their heirs and assigns for ever, equally, as tenants in common and not as joint-tenants, when and as he, she, or they should attain his, her, or their age or ages of 21 years. And the testator devised all the residue and remainder of his real and personal estate and effects, whatsoever and wheresoever, not before otherwise disposed of, to his daughter, *S. D.*, absolutely, for her sole and separate use: *Held*, that, in the above demise, *issue* was to be construed "children," and therefore *G. D.* took an estate for life only, with remainder to his children as purchasers, and not an estate tail; and therefore that, on his death without issue, *S. D.* took under the residuary devise, notwithstanding a deed of disentailer executed by *G. D.* in his life-time; for a deed of disentailer, executed under the 3 & 4 W. 4, c. 74, has no effect in barring future contingent estates, unless the party executing it was in fact a tenant in tail. *Slater v. Dangerfield*, 15 M. & W. 263.

Cases cited in the judgment: *Greenwood v. Rothwell*, 5 M. & G. 628; *Merest v. James*, 1 Brod. & B. 484; *Lees v. Moseley*, 1 Y. & C. 589; *Doe d. Applin*, 4 T. R. 82; *Doe v. Cooper*, 1 East, 229.

2. *Legal estate*.—When executed in *cestui que trust*. Lands were devised (before stat. 7 W. 4, & 1 Vict. c. 26) to *L.* and his heirs, in trust to permit and suffer *A.* to take the rents and profits during *A.*'s life, "with this proviso, to pay" *W.*, out of the same, an annuity for her life, and if *A.* died before *W.* to permit *W.* to enjoy the lands for her life: and, after the deaths of *A.* & *W.*, deviser gave and devised the lands to the heirs male of *A.*, remainder over.

A. & *W.* both survived the deviser. *A.* survived *W.*, and, after *W.*'s death, suffered a common recovery.

Held, that assuming *L.* to have had a legal estate during *W.*'s life, *A.* was legal tenant in tail male after *W.*'s death, and that the recovery barred the estate tail and remainders. *Adams v. Adams*, 6 Q. B. 860.

Case cited in the judgment: *Barker v. Greenwood*, 4 M. & W. 429.

DISTRESS.

Rent.—*Proceedings in insolvency*.—It is no objection to a distress for rent that the tenant, after it became due, petitioned the Insolvent Debtors' Court under stat. 1 & 2 Vict. c. 110., inserted the rent in his schedule as a debt, was opposed in respect of it by the landlord, and obtained his discharge. *Phillips v. Shervill*, 6 Q. B. 944.

Cases cited in the judgment: *Briggs v. Sowry*, 8 M. & W. 729; *Newton v. Scott*, 9 M. & W. 434; 10 M. & W. 471.

And see *Landlord & Tenant*.

ENCROACHMENT.

Erection of cornice overhanging garden.—A declaration in case stated that the defendant, being possessed of a messuage adjoining a garden of the plaintiff, erected a cornice upon his messuage, projecting over the garden, by means whereof rain water flowed from the cornice into the garden, and damaged the same, and the plaintiff had been incommoded in the possession and enjoyment of his garden: *Held*, that the erection of the cornice was a nuisance from which the law would infer injury to the plaintiff; and that he was entitled to maintain an action in respect thereof, without proof that rain had fallen between the period of the erection of the cornice and the commencement of the action. (1)

Held, also that the declaration was not to be construed as alleging a *trespass*. (2) *Fay v. Prentice*, 1 C. B. 828.

Cases cited in the judgment: *Baten's case*, 9 Co. Rep. 53, b.; *Pickering v. Rudd*, 1 Stark, N. P. C. 56.

ESTOPPEL.

In an action by an indorsee against the acceptor of a bill, which upon the face of it purported to be a foreign bill: *Held*, that the defendant was not estopped from showing, that, though dated abroad, the bill was in fact drawn in London; although it was proved that this was done at his express request, and that the plaintiff, who took the bill for value, was not cognisant of the circumstances. *Steadman v. Duhamel*, 1 C. B. 888.

Case cited in the judgment: *Field v. Woods*, 7 Ad. & E. 114; 2 N. & P. 117.

FALSE REPRESENTATION.

In case against husband and wife for falsely representing to the plaintiff, a broker employed by them to distrain upon certain premises in which the wife had an interest, that the latter was entitled to distrain for rent in arrear, whereby the plaintiff, who made the distress, was put to costs in a replevin suit: it appeared that a distress-warrant was signed by the wife and handed to the plaintiff in the presence of the husband; that no representation whatever was made by the defendants, or either of them, at the time the warrant was so handed over; but that, in fact, the wife had no right to sign a warrant, the legal estate in the premises being in the trustees under her marriage settlement: *Held*, that it was properly left to the jury to say whether there was any false or fraudulent representation in the mere omission to state that the property was in settlement when the plaintiff was employed to distrain; and the jury having found there was not, that the plaintiff was not entitled to recover on *not guilty*, it being essential to the maintenance of the action that the falsehood of the representation should have been known to the party making it. *Rawlings v. Bell*, 1 C. B. 951.

Case cited in the judgment: *Polhill v. Walter*, 3 B. & Ad. 114.

FISHERY.

Custom.—Possession of fisherman.—Plaintiff, while fishing for pilchards, had nearly encompassed the fish with a net; but defendant, by rowing his boat to the opening, disturbed the fish and prevented the capture. Plaintiff brought trespass; and issues being joined, 1. On plaintiff's possession of the fish; 2. On the fish being plaintiff's in manner, &c.: *Held*, that he was not entitled to recover, no special custom of the fishery being proved. *Young v. Hichens*, 6 Q. B. 606.

FREIGHT.

See *Charter-Party*.

GROWING CROPS.

See *Deed*.

GUARANTEE.

1. *Consideration*.—A declaration on a guarantee stated, that, in consideration that *A.*, the plaintiff, would sell and deliver goods to *C.*, *B.*, the defendant, promised *A.* to guarantee to him the payment of the amount of, or the balance unpaid to *A.* for any goods then sold and delivered, and to be thereafter sold and delivered to, and of any money lent, or to be lent to, or paid for *C.* by *A.*, to the extent of 1,000*l.*, and that *A.* should be at liberty, at any time thereafter, to call upon *B.* for the payment of the 1,000*l.*, which might be applied by *A.* as *A.* thought proper, either in payment or part payment of any debt which might be due or have been due to *A.*, and should not have been paid by *C.* *Held*, on motion in arrest of judgment, that the declaration disclosed a sufficient consideration for the promise. *Boyd v. Moyle*, 2 C. B. 644.

2. *Consideration*.—A guarantee was given in these terms:—"In consideration of advances made and to be made by *A.* and *B.*, or by any other persons of whom their firm may from time to time consist, in the way of loan, &c., we jointly and severally hereby guarantee to *A.* and *B.* the repayment of the said advances, and to indemnify them against any loss by reason of such advances; our liability not to exceed 1000*l.*; this guarantee to be a continuing guarantee, and to be a security to *A.* and *B.* to the extent of 1,000*l.*, as aforesaid, for the whole of any balance which may from time to time, or at any time, become due to *A.* and *B.*, or to the persons for the time being constituting the firm." *Held*, that this instrument disclosed a sufficient consideration for the defendant's promise, though there had been no change in the firm. *Chapman v. Sutton*, 2 C. B. 634.

3. *Consideration*.—*Continuing guarantee*.—*Assumpsit* on the following guarantee:—"In consideration of your agreeing to supply goods to *K.* at two months' credit, I agree to guarantee his present or any future debt with you to the amount of 60*l.* Should he fail to pay at the expiration of the above credit, I bind myself to pay you within seven days from the date of received notice from you." *Held*, that this was a continuing guarantee; and that, as to all the

debts guaranteed, it was an agreement relating to the sale of the goods, within the exception in the Stamp Act, 55 G. 3, c. 184, sched. part 1. *Agreement*. *Martin v. Wright*, 6 Q. B. 917.

HACKNEY CARRIAGE.

Defacing driver's licence.—By the 6 & 7 Vict. c. 86, s. 21, the proprietor of a hackney carriage is required to retain in his possession the licence of every driver, &c., employed by him while such driver, &c., remains in his service. A declaration in case stated, that the plaintiff obtained a driver's licence under the act; that he was employed by the defendant, a proprietor of a hackney carriage, and under the provisions of the act, delivered the licence to him; and that whilst the licence remained in the defendant's possession, the latter "*wrongfully and unjustly*" wrote in ink upon the licence certain words purporting, and then being intended by the defendant, to give a character of the plaintiff as an unfit and improper person to act as a driver of hackney carriages, that is to say, " &c., &c.; by reason whereof the licence became defaced and wholly useless to the plaintiff, and the plaintiff was thereby hindered and prevented from obtaining employment as a driver, &c.: *Held*, on motion in arrest of judgment, that the action was maintainable; that case was the proper form; and that the declaration was sufficient. *Hurrell v. Ellis*, 2 C. B. 295.

INSURANCE.

See *Landlord and Tenant*.

ISSUE.

See *Devise*.

LANDLORD AND TENANT.

1. *Second distress*.—Trove lies against a landlord who makes a second distress for the same rent, when he might have taken sufficient at first, or when, having taken a sufficient distress at first, he voluntarily abandons it. *Dawson v. Cropp*, 1 C. B. 961.

2. *Covenants to insure*.—*In joint names*.—*Breach*.—*Waiver*.—Lessee of buildings covenanted in the lease to "insure and continue insured" such buildings in the joint names of himself and the lessor, his executors, &c., or assigns; and there was a proviso for re-entry on breach of the covenant. The lessee insured in his own name singly, but showed the policy to the lessor, who approved of it, and accepted rent during the next three years ending at Christmas, 1842. The premiums of insurance were duly paid up to that time, the premium at Christmas, 1842, covering the year 1843, and the policy continuing unaltered. In Jan., 1843, the lessor assigned; and the assignee, in the same year, brought ejectment for a forfeiture incurred by not insuring in their joint names. No notice had been given to the lessee to alter the policy. *Held*, that the covenant to insure in the joint names was a continuing covenant, and was not waived by the conduct of the lessor, except as to past breaches; and that the ejectment lay. *Doe d. Muston v. Gladwin*, 6 Q. B. 953.

Cases cited in the judgment: *Green v. Bridges*, 4 Sim. 96; *Pickard v. Sears*, 6 A. & E. 469; *Doe d. Pittman v. Sutton*, 9 C. & P. 706; *Doe d. Knight v. Rowe, Ry. & Moo.* 343; *Doe d. Flower v. Peck*, 1 B. & Ad. 428.

3. *Holding over without assent.—Evidence.*—Where there is a demise to *A.* and *B.* for a term, and *B.* holds over after the expiration of the term, without *A.*'s assent, *A.* is not liable for rent becoming due during such holding over. *Draper v. Crofts*, 15 M. & W. 166.

See *Trover*.

LEASE.

Construction of agreement.—*A.* agreed to let, and *B.* to take a piece of land, with liberty to build thereon, such warehouses, glasshouses, kilns, houses for workmen, and other erections necessary for carrying on the business of a glass manufactory, as he should think fit, for 61 years at a certain rent; and *B.* agreed to pay the rent, to build in a substantial manner, and not to use the premises for any other purpose than a glass manufactory during the term. A lease and counterpart to be executed in conformity with the agreement in which should be inserted all usual covenants: *Held*, that this agreement did not warrant the insertion in the lease of an affirmative covenant by the lessee, that he would carry on the business of a glass manufactory on the demised premises during the term. *Doe d. Marquis of Bute v. Guest*, 15 M. & W. 160.

LEGAL ESTATE,

See *Devise*.

LIBEL.

1. *Right of comment on administration of charity.*—On sermons preached but not published.—The conduct and management, by a clergyman of a parish, of a charitable society in the parish, from the benefits of which dissenters are, by his sanction, excluded, is not the lawful subject of public comment, so as to excuse, under the plea of not guilty, the publication of untrue and injurious matter respecting the clergyman in relation to the charity. *Quere*, whether sermons preached in a church, but not published, are the lawful subjects of such public comment. *Gathercole v. Miall*, 15 M. & W. 319.

2. *Privileged communication.*—*A.*, a trader, being indebted to *B.*, upon an unexpired credit, employs *C.* to sell his goods by auction, and absents himself, under circumstances sufficient to induce *B.* to believe that an act of bankruptcy has been committed. *B.* gives notice to *C.* not to pay over the proceeds to *A.*, "he having committed an act of bankruptcy." In an action by *A.* against *B.*, charging this notice as a libel, it was held by *Tindal, C. J.*, and *Coltman* and *Erle, J.*'s, to be a privileged communication, (*dissentiente Cresswell, J.*) *Blackham v. Pugh*, 2 C. B. 611.

3. *Privileged or excusable communication.*—*Master of vessel.*—*Shipowner.*—*C.*, the mate of a ship, sends to *B.*, a stranger, a letter charging *A.*, the captain, with gross misconduct. *B.*

shows this letter to *D.*, the owner, who dismisses *A.*

Held, by *Tindal, C. J.*, and *Erle, J.*, that the showing of the letter by *B.* to *D.* was a privileged communication. *Held*, by *Coltman* and *Cresswell, J.*'s, to be not privileged. *Coxhead v. Richards*, 2 C. B. 569.

Cases cited in the judgment: *Pattison v. Jones*, 8 B. & C. 578; 3 M. & R. 101; *Child v. Affleck and wife*, 9 B. & C. 403; 4 M. & R. 338; *Toogood v. Spyring*, 1 C. M. & R. 181; 4 Tyrwh. 582; *Bromyge v. Prosser*, 4 B. & C. 247; 6 D. & R. 296; *Rogers v. Clifton*, 3 B. & P. 587; *Lowry v. Aikenhead*, Mich. & G. 5; 3 B. & P. 594; *Dunman v. Bigg*, 1 Campb. 269; *Todd v. Hawkins*, 2 M. & R. 20; 8 C. & P. 88; *Herve v. Dowson*, Bull. N. P. 8; and *Cleave v. Surraude* in *McDougall v. Claridge*, 1 Campb. 268; *King v. Watts*, 8 C. & P. 614; *Carr v. Hood*, 1 Campb. 355; *Parmer v. Coupland*, 6 M. & W. 105; *Fairman v. Ives*, 5 B. & Ald. 642; *Wright v. Woodgate*, 2 C. M. & R. 573; *Tyrwh. & G.* 12; *Gale, Exch.* 329; *Blake v. Pilfold*, 1 M. & Rob. 198; *Edmondson v. Stevenson*, Bull. N. P. 8.

4. *Construction of inuendo.*—A declaration for a libel stated, that on a certain night, a gentleman was hounded and robbed in a public house kept by the plaintiff: *inuendo*, "that a person had been feloniously drugged and robbed in the said public-house of the plaintiff, and thereby intending to cause it to be believed that the said public house of the plaintiff was the resort of and frequented by felons, thieves, and depraved and bad characters." The jury having returned a verdict for the defendant, notwithstanding that witnesses called for the plaintiff stated that they had ceased to frequent the plaintiff's house in consequence of the publication, and that they understood the libel as an imputation upon the plaintiff, and upon the character and conduct of his house—the court refused to grant a rule for a new trial. *Broome v. Gosden*, 1 C. B. 728.

MAINTENANCE.

Executor.—Sale of pretended titles.—A sale by an administrator of a "pretended right or title" to premises of a term in which the intestate died possessed, but of which the administrator never had possession, is within the prohibition of the stat. 32 H. 8, c. 9.

A., possessed of a term, died in 1828. *B.*, who had during *A.*'s life resided on part of the premises, at *A.*'s death claimed and took possession of the whole, and retained it till he died in 1829, having by his will devised the premises to *C.*, who remained in undisturbed possession until 1841, when *A.*'s next of kin took out letters of administration, and sold his right or title in the premises to *D.*: *Held*, that the conveyance was void, as well at common law as by the stat. 32 H. 8, c. 9. *Doe d. Williams v. Evans*, 1 C. B. 717.

MANDAMUS.

Non obstante veredicto.—To a mandamus requiring the governors to restore a master whom they had dismissed, and alleging that he had

always behaved himself well, &c., the governors made return, stating the charter, and averring that the prosecutor did not always behave himself well, &c., and that they received complaints from parents of the scholars, viz., from *A. B.* and *C. D.*, of the prosecutor's misconduct and inattention, and particularly that, &c., (specifying complaints made by *A. B.* of particular acts of misconduct); that the governors gave the prosecutor notice of the complaints, and called upon him to answer, which, (after having reasonable time and opportunity,) he failed to do; and that the governors, being satisfied of the truth of the charges, in the exercise of their best discretion, and deeming the prosecutor an unfit person to be master, discharged him. Prosecutor took several traverses, denying that he had committed the acts charged, or that he had reasonable time, &c., to answer. He also pleaded the above bye-law, and that no sufficient cause of complaint, exhibited in writing, was, before his dismissal, allowed, according to the said law. The governors joined issue on the traverse, and replied to the plea, stating acts of misconduct, notice thereof to the governors, complaint in writing exhibited by them setting forth the causes, which were sufficient for dismissal, delivery of the written complaint to the prosecutors, omission by him to answer, though he had reasonable time and opportunity, allowance of the charges by the governors, and dismissal thereon. Rejoinder, denying that a complaint in writing, stating sufficient cause, was delivered to prosecutor, or allowed by the governors. Issue thereon.

A verdict being found for the crown on all the issues, the Court of Queen's Bench gave judgment for the defendants *non obstante veredicto*.

Held, by the Court of Exchequer Chamber that, under stat. 9 Anne, c. 20, s. 2, (and consequently under 1 W. 4, c. 21, s. 3,) judgment *non obstante veredicto* may be given for a party making return to a mandamus, and that it was rightly given here.

Quere, by the Court of Exchequer Chamber, whether, in other cases than that of mandamus, judgment *non obstante veredicto* may be given for a defendant as well as for the plaintiff. *Semble*, per *Parke, B.*, that it may. *Reg. v. Governors of Darlington School*, 6 Q. B. 683.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Spencer v. Allen. Feb. 10, 1847.

ORDERS OF MAY 10, 1839, (NO. 1.)—SUCCESSIVE WRITS OF *FI. FA.*

Several writs of fi. fa. under the 1st of the Orders of the 10th May, 1839, may be successively issued until the whole of the costs ordered to be paid shall have been levied.

Mr. Hall stated, that under a writ of *fi. fa.*, issued pursuant to the 1st of the Orders of 10th May, 1839, for certain costs ordered to be paid, the sheriff had levied only a portion of the amount, and had certified that there were no more goods in the county belonging to the party. As it was known that there was property in another county, application was made for another writ under which the balance might be levied; but doubts were raised in the office of the records and writs clerks, whether such second writ could be issued, as the form of writ annexed to the above-mentioned orders requires the precise sum to be stated at which the costs should have been taxed.

Mr. Hall submitted, that the case came within the meaning of the 1st of the above orders, which directs, that every person under the circumstances and in manner therein expressed, "be entitled by his solicitor to sue out one or more writs of *feri facias*," &c., "of the form hereinafter stated, or as near thereto as the circumstances of the case may require."

The Lord Chancellor having perused the order and form, remarked, that several writs might be issued at common law until the whole amount was levied, and his lordship saw no reason why the same should not be done in these courts.

Rolls Court.

Hilton v. Lord Granville. Feb. 5th, 1847.

REVIVOR.—REMAINDER-MAN.

An order to revive against the personal representative of a defendant, in a suit whereby it is sought to affect a right which has descended to such representative in the character of remainder-man, will have no effect in respect to so much of the suit as seeks to affect such right.

THIS was a motion that the plaintiffs might revive the suit, which had become abated by the death of the late Lord Granville, or that the bill might be dismissed. The bill sought to restrain Lord Granville from working certain mines in a manner injurious to the property above them, and to obtain compensation for damage already done. The defence set up was, a right in the crown, and in Lord Granville as lessee of the crown, to work the mines without making compensation for the injuries occasioned by such working, though arising from a mode of working which, under ordinary circumstances, would not be justifiable. An issue was directed to try this question; and, for the purpose of the trial, it was ordered that certain admissions should be made by Lord Granville as to the nature and extent of the damage done, with the view of trying the question of the alleged right. The admissions made were, however, not so framed as to raise the question intended to be tried; and before the case could be brought into such a state that the point could be tried, Lord Granville died. A bill of revivor and supplement had been filed, but no order to revive had been ob-

tained. The present Lord Granville, on whose behalf the motion was made, was both the personal representative of the late lord, and the person to whom, as remainder-man, the alleged right to work the mines had descended, and was desirous of having the suit revived in order that he might be able to bring it into such a state as would admit of the right being fairly tried. The plaintiffs stated that they had not revived because in the revived suit the right to do the acts complained of could not be settled, but only the question of the compensation, if any, to be recovered against the estate of the late Lord Granville, while they were apprehensive that they might be prejudiced in the proceedings intended to try the alleged right of the present Lord Granville to work the mines in the manner complained of, by reviving the suit against him as the representative of the late lord.

Mr. Turner for the motion.

Mr. Kindersley contra.

Lord Langdale said, that if he had any idea that the order to revive could be sued so as to affect any proceedings against the present Lord Granville as remainder-man, he certainly could not make it. But he did not see how that could be. He considered that the order to revive would have no effect at all, as respected that part of the suit which sought to bind the right, and it must therefore be made in the common form.

Giddings v. Giddings. Jan. 28, and March 10.

SECURITY FOR COSTS.

If a plaintiff goes to reside out of the jurisdiction, the court will order that he give security for costs, or that the bill be dismissed within a limited time, but will not make any order as to the costs of the suit.

THIS was a motion that the plaintiff, who had gone to reside out of the jurisdiction, should give security for costs, or that the bill should be dismissed with costs.

Mr. Heathfield, for the motion, referred to *Camac v. Grant*, 1 Sim. 348; *Cliffe v. Wilkinson*, 4 Sim. 122; and *Veitch v. Irvin*, 41 Sim. 122; as authorities in favour of the application; and referred also to *Ford v. The Bank of England*, 10 Sim. 616, as a case in which it was held that the bill could not be dismissed, but which, he contended, was not consistent with the practice of the court as settled by the other cases.

Lord Langdale observed, that nothing was said in those cases about the costs, and inquired whether the plaintiff could be served.

It appeared, however, that the plaintiff had gone to America.

March 10. Lord Langdale said, that he had inquired into the practice, and, after referring to the cases above cited, and also to the case of *Lautour v. Holcombe*, 1 Phil. 263, expressed his opinion that the motion to dismiss the bill unless security for costs should be given within a limited time was conformable to the

practice of the court, but that the court could not make any order as to the costs of the suit. Order that the bill be dismissed, unless security for costs shall be given within six months.

Vice-Chancellor of England.

Lee v. Melendez. March 10th, 1847.

NE EXEAT REGNO.—PAYMENT OF MONEY INTO ACCOUNT.

A defendant who quits England, after having given bail on a writ of ne exeat regno, will be ordered to pay into court the amount for which the bail gave their bond.

THIS suit was instituted by the plaintiff against the defendant Melendez and two other persons, for an account and injunction, in respect of an alleged partnership transaction created by an agreement which was to subsist for three years, and which had not yet expired. In the month of July last a writ of *ne exeat regno* was obtained by the plaintiff against the defendant Melendez, upon an affidavit, in which, after a statement of the accounts between the parties, the plaintiff deposed that the defendant Melendez, with the other partners, was indebted to him in a considerable sum of money, and as he verily believed, in a sum of 1,000*l.* at the least, after giving credit for all sums that he, the plaintiff, had received. The defendant Melendez was arrested upon this writ, and gave bail to the sheriff, and having shortly afterwards left this country for Paris, where he had fixed his residence, the plaintiff now moved that he might be ordered to pay into court the sum of 1,000*l.*, the amount for which he had given bail. No denial was given to the fact of his having a permanent residence at Paris, but in opposition to the motion an affidavit had been filed stating that he was always to be seen at a house in Hyde Park Place, which, however, was proved to be the residence of the minister of Peru.

Mr. Bethell and Mr. Lovell, in support of the motion, cited *Musgrave v. Medez*, 1 Mer. 49; *Utten v. Utten*, 1 Mer. 51.

Mr. Pryor, contra, urged, that in the cases cited, as also in *Boehm v. Wood*, Turn. & Russ. 332, the defendant was actually out of the jurisdiction, whereas in this case the defendant was ready to be produced, and as the defendant's time for answering had not expired, he was not in contempt, so that there was no process of the court to be satisfied. It must also be considered that the bail given to the sheriff was tantamount to the custody of the defendant, 4 & 5 Anne, c. 16; *Payne v. Spencer*, 6 Mau. & Selw. 231; and that the sheriff, on an escape, was liable only to such damages as could be proved to have been sustained by the party at whose suit a defendant was arrested, 5 & 6 Vict. c. 98, s. 31; *Collard v. Hare*, 5 Sim. 10.

The Vice-Chancellor said he considered that Lord Eldon had settled the question raised by this motion in *Utten v. Utten*; and as it had

been suggested that the bail, in the eye of the law, had the defendant in custody, the amount for which security was given ought to be forthcoming on a breach of the condition upon which bail was taken. His Honor ordered that the 1,000*l.* should be paid into court within four months, and that the defendant should pay the costs of the application.

Vice-Chancellor Knight Bruce.

Towne v. Bonnin. Feb. 27th, 1847.

TRAVERSING NOTE.—58TH ORDER OF MAY, 1845.

Circumstances under which a traversing note and the replication off the file.

Mr. Rusch, on the 24th of the present month, moved, (and to day he renewed the motion,) to take the traversing note off the file. The steps taken in the cause were these:—On the 3rd of December, the bill had been filed; on the 23rd of January the time for answering was out. The Master having refused any enlargement of time, the traversing note was filed on the 3rd of February. On the 4th of February the replication was filed. The answer was prepared and engrossed on the 5th, but not filed. The case of *Rigby v. Rigby*, 6 Bea. 255, and the 55th and 58th Orders of May, 1845, were cited.

The motion was opposed by Mr. Egan, upon the ground of the refusal to enlarge the time for answering, and the removal of the replication not being asked by the motion.

His Honour granted the motion, also directing the replication to be taken off the file.

Queen's Bench.

(Before the Four Judges.)

The Queen v. The Mayor and Corporation of London.

ATTORNEY.—INFERIOR COURT.—ROLL OF THE COURT.

The Lord Mayor's Court in London is an inferior court within the meaning of the 6 & 7 Vict. c. 73, ss. 2 & 27, and therefore an attorney of any of the superior courts may claim to be admitted as an attorney of that court, on signing the roll thereof. The fact that the Lord Mayor's Court has no roll does not exempt it from the operations of the statute.

The obligation to have a roll is, under the 6 & 7 Vict. c. 73, s. 2, imperative on all the inferior courts of the kingdom.

A MANDAMUS issued to the Lord Mayor and aldermen of the city of London to admit W. H. Ashurst, an attorney duly admitted in the superior courts at Westminster, as an attorney of the Lord Mayor's Court, under the 6 & 7 Vict. c. 73, s. 27.^a The return to the

mandamus set out the particular nature and jurisdiction of the Lord Mayor's Court; that it possessed a civil, criminal, and equitable jurisdiction; that there is not a roll of attorneys, or any thing in the nature of a roll; and that there is an immemorial custom in the city of London limiting the number of attorneys in the Lord Mayor's Court to four clerks or attorneys, who have enjoyed the exclusive right of practising in the said court. To this return there was a demurrer, and the principal question raised for the opinion of the court was, whether, under the facts and circumstances stated in the return, the Lord Mayor's Court could be considered an inferior court within the meaning of the 6 & 7 Vict. c. 73.

Mr. Hill, (with whom was Mr. Pulling,) in support of the demurrer.

The court called upon Mr. Gurney, (with whom was Mr. Hugh Hill,) *contra*. This is not a case within the contemplation of the legislature, and Mr. Ashurst is not entitled to be admitted to practise as an attorney in the Lord Mayor's Court. This is an immemorial court, and has a jurisdiction partly civil and partly criminal, different from all other inferior courts. The number of attorneys is limited, they purchase their admission, and they practise in the capacity of corporate officers. In *Co. Litt.* 115 a, it is said, that an affirmative act does not take away a custom. In *Simson v. Moss*,^b and *The Mayor of Leicester v. Burgess*,^c it has been held that the general provisions of a statute did not supersede the custom of a borough; and in *Rex v. Bugshaw*, the court held, that by the custom of London, an apprentice to one trade may use any other, notwithstanding the statute 5 Eliz. c. 4. The customs of the city of London are recognised and confirmed by act of parliament 2 W. & M. c. 8. The 19 Geo. 3, c. 70, s. 4, which provides, that in all cases where final judgment shall be obtained in any action or suit in any inferior court of record, the record may be removed, is confined to those suits in inferior courts where the proceedings are similar to those in the superior courts, and therefore does not extend to foreign attachment. *Balmer v. Marshall*.^d The attorney claiming to be admitted under the 6 & 7 Vict. c. 73, is required to sign the roll, and there is no roll in existence in the Lord Mayor's Court. The statute in question only applies to an inferior court where there is a roll, and therefore does not apply here.

of the superior courts at Westminster shall be entitled, upon the production of his admission therein, or an official certificate thereof, and that the same still continues in force, to be admitted as an attorney in any other of the said courts, or in any inferior court of law in England and Wales, upon signing the roll of such other court, but not otherwise, and shall thereupon be entitled to practise as an attorney therein in like manner as if he had been sworn in and admitted an attorney of such court.

^a 2 Barn. & Adol. 543.

^b 2 Barn. & Adol. 246.

^c 1b. 821.

^a Sec. 27 enacts, that every person who shall have been duly admitted an attorney of any one

Mr. Hill in reply. This case not only comes within the letter of the statute 6 & 7 Vict. c. 73, s. 27, but the preamble taken with reference to the existing law on the subject, shows that it comes within the intention of the legislature. As to the construction of statutes and the effect of affirmative statutes introductive of a new law, he cited *Ex parte Curuthers*; ^c *Rex v. Cator*; ^d *Ba. Abr. Statutes J.* This court will interfere in case of malpractice of an attorney in an inferior court; *Evans v.* —^e The immemorial usage and custom alleged in the return cannot control the operation of this statute, for in *Rex v. The Sheriffs of York*,^h the court said there could be no such immemorial usage as applicable to the admission of attorneys; for before the statute of Merton no person could appear by attorney. The want of a roll in the Lord Mayor's Court cannot form any impediment to the operation of this statute.

Cur. adv. vult.

Lord Denman, C. J., (Thursday, Feb. 25,) after stating the substance of the facts as disclosed on the return said,—“The case depends mainly on two questions; first, whether the return shows that the court was not an inferior court; and secondly, whether the non-existence of a roll on which names could be signed was an answer to the application, on the ground that the act of parliament was not intended to apply to courts which had no roll of the sort therein referred to. With respect to the first point, the words of the statute appear to be very extensive. The 27th section says that the person shall be admitted an attorney in “any inferior court of law in England and Wales.” The words themselves are general, they include all inferior courts, of which we think this to be one, unless it can be shown to have anything peculiar in its jurisdiction which exempts it from being included in such an appellation. Now we find that the Lord Mayor's Court has all the incidents which distinguish an inferior from a superior court, and that being so, it is within the plain terms of the act of parliament. If within the terms of the act, the provisions of the act must be extended to it, whether we may or may not think that the legislature purposely intended to include this court in the statute. But then it is said that the act cannot here be complied with, because the act requires a roll to be signed; that on the signing of that roll, and not otherwise, the party shall be admitted; and that this court having no roll, compliance with the statute is impossible. If that objection could be admitted, it would take a great proportion of the inferior courts of the country out of the operation of the act. There are many that have no rolls. We find, however, something that must prevent such a result. In the 2nd section of the statute there is a prohibitory enactment, that no person shall act as an attorney in “any court of civil or criminal jurisdiction, or in any other court of law or

equity in England or Wales,” unless such person shall be duly qualified, and shall be on the roll at the time of so acting. It is clear that the two sections of the statute must be read together, and if so, then it seems to be intended by the legislature that no admission to any court shall be good but upon signing the roll. The statute must have a reasonable construction. In courts where a roll already exists it must be signed; in courts where none exists a roll must be procured. Under these circumstances, we are of opinion that the return is not a sufficient answer to the mandamus, and that judgment must be given to the crown.

Exchequer.

Holmes v. Carden. Hilary Term, Feb. 1, 1847.

REFERENCE.—INCAPACITY OF ARBITRATOR TO AWARD.

Where a cause was referred by order of nisi prius, and the arbitrator, after proceeding with the reference, was incapacitated by mental affliction from making an award: Held, that the court had no power to allow judgment to be signed and execution issue, unless the defendant would consent to the appointment of another arbitrator.

THIS cause came on for trial, when a verdict was taken for the plaintiff by consent, subject to a reference. The arbitrator proceeded with the reference but was unable, from mental affliction, to make any award. The defendant refused to consent to another arbitrator being appointed, and a rule was obtained calling on him to show cause why the plaintiff should not be at liberty to sign judgment and tax costs on the verdict entered for him, and issue execution unless the defendant would consent to proceed with the reference before another arbitrator.

Atkinson showed cause, and submitted, that the court had no power to compel the defendant to refer the case to another arbitrator.

The *Attorney-General* opposed the rule.

Per curiam. We think that under the circumstances the defendant ought to consent, but as he refuses to do so we cannot compel him, and the rule must be discharged.

Rule discharged.

Court of Bankruptcy.

In re Wells. March 5, 1847.

LAST EXAMINATION.—NO CREDITOR'S AS-

Where no creditor's assignee has been chosen, the bankrupt cannot be allowed to pass his last examination as of course.

THE bankrupt Wells having come up to pass his last examination, and no creditor appearing to oppose him,

Mr. Commissioner Fane said, he must decline in this case to permit the bankrupt to pass, and his decision was founded upon general principles. Wells was a bankrupt upon his own petition. As usual in those cases

^c 9 East, 44.

^d 4 Burr. 2026.

^e 2 Wilson, 382.

^h 3 Barn. & Adol. 770.

Towns Improvement Clauses. For 2nd reading.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 3, 1847.

'Quod magis ad nos
Pertinet, et nescire malum est, agitamus.'

HORAT.

BANKRUPTCY, INSOLVENCY, AND ARREST.

AMENDMENTS OF LORDS BROUGHAM AND CAMPBELL.

THE amended bill introduced by Lord Brougham, by which it is considerably proposed, *inter alia*, that the registrars of the Court of Bankruptcy, now paid for doing *little*, should be secured the same amount of salary during life for doing *nothing*, has been read a second time in the House of Lords, without opposition, the noble and learned mover having announced his attention of proposing that it should be referred to a select committee after Easter. Had the bill emanated from any less inveterate law-reformer than Lord Brougham, we should infer, considering the probability of a speedy dissolution, and the state of public business, that a reference to a committee up stairs was equivalent to a determination to abstain from pressing the measure during the present session; but the experience of the last ten years suggests more than one instance, in which a bill, involving alterations equally extensive and important, was hurried through both houses of parliament during the last month of the session, with a velocity only comparable to the speed of an express train on the broad gauge.

The most remarkable feature of the short discussion which preceded the second reading of Lord Brougham's bill was, the declaration of Lord Ashburton, that the merchants and traders of the city of London were strongly of opinion, that no amendment of the Law of Debtor and Creditor could be satisfactory or effective which did not involve a return to the principle of

arrest on mesne process; and his lordship significantly added, that those whose sentiments he professed to represent in this matter might well be supposed to take a deep interest in the question, as it was calculated that the total amount of their loss by bad debts was not less than twenty-four millions annually!

It would be difficult, perhaps, to exaggerate the extent of injury and mischief occasioned, to the mercantile and trading community, by the constant succession of violent and inconsistent changes introduced into this branch of the law during the last dozen years. In one session an act was passed in which the interests of creditors appeared to be totally disregarded: in the next session the debtor was harshly and unduly pressed upon. No particular principle was adhered to, but the predominant intention was to alter and unsettle. It is not at all improbable we shall soon discover that legislation runs in a circle, and that we must come back to the point from whence we started.

The bill introduced by Messrs. Warburton and Leader, at the close of the last session of parliament, for restoring arrest on mesne process, presented an opportunity for discussing the expediency of that proposition of which we partially availed ourselves.* The general principles applicable to the question are by this time tolerably well understood. The law ought not to interpose difficulties or impediments in the way of those who are exerting their energies and industry in the pursuits of business; but when it is ascertained that a

* See the bill, vol. 32, p. 526, and the commentary, *ante*, p. 1.

man has incurred pecuniary obligations he is unable or unwilling to fulfil—in other words, that he is insolvent—it is for the public benefit that his dealings should be brought to a stop, and his circumstances investigated at the earliest possible period. A man who continues to trade after he becomes insolvent, does so invariably to the injury of others: he has not sufficient inducement to conduct his affairs prudently, and has not the means of doing so beneficially. The examination into a debtor's circumstances involves an inquiry into his conduct. If he has fraudulently or carelessly incurred debts he is unable to pay, he should be subjected to punishment proportioned to the nature and extent of the injury inflicted on society. On the other hand, if he becomes insolvent by accident or misfortune, he should be put to the least possible inconvenience that is consistent with the security of his creditors, and the procurement of that inquiry which affords the means of discriminating between the culpable and innocent debtor. So far, we apprehend, there exists no material difference of opinion. The difficulty arises in determining how and when the inquiry into the affairs of the debtor is to be brought about? Experience has demonstrated, that if the investigation is delayed until a creditor obtains a judgment and takes the debtor in execution, to say nothing of the expenses of such a proceeding, the time that must necessarily elapse enables the ill-disposed debtor to make away with his property, and defeat the just claims of his creditor. To oblige the debtor to submit to an investigation at an earlier period, some compulsory proceeding must be adopted, and the most obvious and least objectionable mode of securing his attendance for that purpose is, by personal restraint where the debtor is unable to give security for his appearance. By this course, no doubt, the unfortunate and the fraudulent debtor are placed in the same category in the first instance, in like manner as the innocent and the guilty charged with violating the criminal law, are subjected to the same inconvenience before trial. But it may fairly be argued, that a man who, even innocently, incurs a debt which he is unable to pay, has *prima facie* inflicted an injury on the creditor, and cannot reasonably complain of the hardship of being compelled, at some personal inconvenience, to explain his conduct. The law of arrest on mesne process, as it existed previous to the passing of the 1 & 2 Vict. c.

110, was justly open to two objections. The oath of the creditor was conclusive as to the existence of the debt in the first instance, and although the debtor might be prepared with an immediate and complete answer to the claim, if unable to procure bail, he remained in prison until the matter in dispute was finally adjudicated upon in the regular course. And again, when the existence of the debt was clear and indisputable, the debtor might avail himself of the forms intended for, and applicable to litigated claims, and postpone the period when he could be compelled to disclose the real state of his circumstances. These defects of the law opened a door for abuses, but the consequences of those abuses appear to have been greatly exaggerated. Attention was exclusively confined to those cases in which the law was unsuccessful and consigned the debtor for a longer or shorter time to a prison; and the innumerable instances in which the law was effectual, and compelled the payment of debts without litigation and without the incarceration of the debtor, were wholly overlooked. This oversight is to be traced in nearly all the statements put forward by those who successfully advocated the abolition of arrest on mesne process. Abundant time has now been allowed for the trial of that experiment, and it would seem those engaged in trade have come very generally to the conclusion, that the effect of the abolition has been to encourage reckless and improvident trading, and increase to an alarming degree the amount of bad debts. Our own impression is, that this disastrous result is not to be ascribed exclusively to any particular measure, but that it is attributable mainly to the injudicious attempts to alter the Law of Debtor and Creditor, and to the unsatisfactory manner in which this branch of the law has been administered. We are glad to perceive that the subject is now taken up by those who have a larger stake, and being fully represented in parliament, a far greater influence in the adjustment of such questions than the members of the legal profession can boast; but in this, as in every other instance, the trading and commercial community will find their interests identical with those of the legal profession, and that what proves advantageous to the one cannot fail to be beneficial to the other.

The committee of merchants and traders, appointed for the purpose of obtaining an amendment of the Law of Bankruptcy and Insolvency, presented a third report to a

public meeting held at the London Tavern, on the 23rd February last, describing the steps taken in furtherance of this object, a copy of which we subjoin, with some slight abridgement.

"In accordance with the resolutions passed at the last meeting, your committee have adopted all the means in their power to awaken and impress on the mind of the public and of the state, the serious evils resulting to commercial honesty and credit from the vicious and defective state of the Law of Bankruptcy and Insolvency, with a view to a general and comprehensive measure of amendment and consolidation of the numerous existing statutes bearing on the subject; and also to get passed into a law the bill for their amendment which had been prepared by your committee, and submitted to and approved by the above meeting.

"For the first of these purposes, your committee caused a series of articles to be written and published from time to time, in the daily papers and other periodicals, setting before the world the abuses of the present system, and the necessity of its reform. They also prepared, and widely circulated, a statement of particular cases, illustrative of the facilities now afforded for the commission of the grossest frauds by dishonest traders, upon their creditors, almost with impunity.

"For the second purpose, that of carrying their bill through parliament, the first step of your committee was to submit the bill to a parliamentary counsel of eminence, by whom it has been remodelled and improved, without, however, altering its principles. Copies of it have been submitted to the Lord Chancellor, and other legal members of the peerage, the law officers of the Crown, the commissioners of bankruptcy and insolvency, the official assignees, the several chambers of commerce, the joint-stock banks, the law societies, and other bodies; they have also printed full particulars of the measure, with remarks explaining the present abuses and the nature of the remedies proposed, which have been very widely circulated both in town and country. The committee have, in fact, adopted every step in their opinion calculated to make the bill generally known, and to court observation and inquiry.

"They have also had interviews with the late Attorney and Solicitor-General, by whom very considerable attention was bestowed upon the several clauses of the bill, and alterations suggested. Meetings have also been had with the Post-office authorities, with a view to simplify the service of the preliminary notice and summons required by the Court of Bankruptcy, and with other public officers likely to be affected by it; much valuable information has resulted from these proceedings, of which your committee have not failed to avail themselves.

"The bill was introduced into the House of Commons by Mr. Hawes, M. P., and was read a first and second time, and committed, and twice reprinted, by the house for the

purpose of introducing alterations suggested by the Attorney and Solicitor-General and others. At this stage, the sudden change in the ministry, and the consequent official appointment of Mr. Hawes, unfortunately deprived the committee of his valuable services; but after a short delay, the Hon. Edward P. Bouverie kindly undertook the charge of the bill; and on the 5th of August, in moving its re-commitment, he brought before the house the unsatisfactory state of the Bankrupt and Insolvent Laws, and the urgent necessity of comprehensive and efficient legislation thereupon. In reply to his observations, the government stated that it was the intention of the present Lord Chancellor to introduce a general measure for the amendment of these laws, which he hoped to perfect before the present session of parliament; and that full consideration would be given to the bill of the committee. It was therefore deemed advisable by your committee not further to press it, but to use their best endeavours that the proposed measure should be such as was demanded by the wants of the mercantile and trading classes. Since this period your committee have been in communication with Mr. Vizard, the Secretary of Bankrupts (the organ of the Lord Chancellor in this matter), upon the subject of the new bill. From him they received a communication on the 10th of December last,* that two separate bills had been prepared for the amendment and consolidation of the statutes relating to bankrupts and insolvents, in which he had inserted several of the clauses of their bill, and that copies should be submitted to them as soon as the bills had been approved by his lordship; he also promised to receive a deputation from them upon the subject as soon as they should have considered the provisions. It is, however, to be regretted that no further progress has been made, your committee having been informed by Mr. Vizard so lately as the 12th instant, that the new bills had not been settled by the Lord Chancellor. They had hoped to have been able before this time to have fully examined and reported upon the particular measures proposed by government, and they much regret that they are not in a position to do so.

"Your committee have to express their congratulations that the exertions which have been made have been attended with a success beyond what could have been hoped, since, although they did not succeed in carrying their own bill in the last session (which bill they have always represented as a partial measure only, and intended merely to remedy certain specific abuses), yet to its introduction into parliament, and to the measures adopted for giving publicity to the crying evils of the system, and to the sufferings inflicted by its means upon the honest and fair trader, the committee feel justified in attributing the fact of the government having at last come forward with a general measure for the amendment of these

* See *ante*, p. 230.

laws—a proceeding which the committee felt to be of too onerous a character to be undertaken by any but the highest authorities. By separate bills for bankruptcy and insolvency being intended, it is hoped that the two classes of cases will be disposed of in separate courts; of the propriety of which course the committee have before reported their opinion.

“Your committee have also to express their gratification at the passing of the Small Debts Act of last session, whereby the establishment throughout the country of courts with appropriate districts, for the recovery of debts not exceeding 20*l.* has been authorised, and one general mode of proceeding established for the whole. In this act the great principle of punishment for debts contracted fraudulently, or without reasonable expectation or ability to pay, is recognised.

“One of the objects of the committee’s bill was to check the issuing of fiats in bankruptcy upon the trader’s own petition, in cases where there are no assets. Your committee are glad to find that one of the commissioners of bankrupt has taken a course to render this abuse of the court less frequent, by a determination to refuse the bankrupt’s certificate in such cases.* They trust that this wholesome plan will be generally followed.

“Your committee refer also with satisfaction to the increasing number of refusals and suspensions of certificates by the court, in cases of dishonesty and improvidence. They have especially to acknowledge the benefit and assistance they have derived from Mr. Commissioner Fane, whose zeal in the reform of those laws is so well known.”

The report concludes with an acknowledgement of the assistance the committee have received from other sources.

The sentiments expressed in this document have, for the most part, our cordial concurrence, but we venture, in the reverse of an unfriendly spirit, to suggest to those by whom it was drawn up, and the still larger class whose opinions it represents and whose sympathies it cannot fail to enlist, that it indicates too much of a unilateral tendency. It should not be forgotten, that whilst the creditor has protection, the debtor must have justice administered in a corrective, and not a vindictive spirit. Let us add, that it cannot fail to detract from the efforts of those who direct this important movement, if they continue to pledge themselves upon collateral questions of minor importance. The concluding paragraphs printed from the report furnish some notable instances of this disposition, and, in our humble judgment, would have been advantageously omitted.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

WE are glad to announce that a new society, composed of metropolitan and provincial solicitors, was formed on the 25th of March, for the purpose of promoting the interests of suitors in the better and more economical administration of the law;—of obtaining the removal of the many and serious grievances to solicitors, and through them to the suitors;—and of maintaining the rights, and increasing the usefulness of the profession.

The association is named, “The Metropolitan and Provincial Law Association,” and consists of all members of the profession who contribute a donation of not less than 5*l.*, or an annual subscription of not less than 1*l.*, to its Funds. The business of the association is to be conducted by a committee of 25 town and 25 country solicitors, with power to add to their number and to appoint local committees.

We shall soon be enabled to state in detail the objects of the society,—the evils it seeks to redress,—and the course proposed to be pursued. In the mean time, we may mention that the association has been formed with the friendly co-operation of the existing law societies, and is designed to unite the profession, without reference to any particular locality. This is the right principle on which to proceed in promoting the objects in view, which are calculated to benefit the general body of solicitors, and through them to promote the true interests of the public.

This society has arisen out of several communications and consequent meetings between a numerous deputation of provincial solicitors and their metropolitan brethren, during the last few months. Knowing the high character, long experience, well-formed judgment, and practical talents of the promoters of the association—joined to the strict justice and public expediency of their object—we cannot doubt of its ultimate success. We have lived long enough to know of a certainty, that however *slow* the people of this country may be in effecting really useful reforms, the time will *surely* arrive when *whatever is right and just will be done*.

* Vide, Original Reports of Court of Bankruptcy. *In re Wells*, p. 503, ante.

POINTS IN COMMON LAW.

WARRANT OF ATTORNEY, WHEN JOINT OR JOINT AND SEVERAL.

A CASE determined in the Court of Common Pleas, and lately reported,^d involved directly the question, when a warrant of attorney is joint, or joint and several, and incidentally, when a contract is to be considered as joint or several? The point arose upon a rule for leave to enter up judgment against Mr. Dawes, upon an old warrant of attorney executed by Dawes and one H. Fraser. Fraser had left the kingdom, which created a difficulty in making the usual affidavit and serving the rule *nisi* on him. The warrant of attorney was in the following form:—

To — and —, Attorneys of her Majesty's Court of Common Pleas at Westminster, jointly and severally, or to any other attorney of the same court.

These are to desire and authorize you, the attorneys above-named, or any one of you, or any other attorney of, &c., to appear in the same court for us and each of us, H. Fraser, and W. Dawes, and then and there to receive a declaration for us and each of us, in an action of debt for the sum of 130*l.* for money borrowed, at the suit of Elizabeth Dalrymple, and thereupon to confess the same action, or else to suffer a judgment by *niddit*, or otherwise, to pass against us in the same action, and to be thereupon forthwith entered up against us and each of us, of record of the said court, for the said sum of 130*l.*, and we the said H. Fraser and W. Dawes, do hereby further authorize and empower you the said attorneys, or any one of you, after the said judgment shall be entered up as aforesaid, for us and in our name and as our act and deed, to sign, seal, and execute, a good and sufficient release in the law of the said E. Dalrymple, her heirs, executors, and administrators, of all and all manner of error and errors, &c. &c.

The answer to the rule was, that the warrant of attorney contemplated but one action, one declaration, and one judgment, and that the application should have been to enter up judgment against Dawes and Fraser, and not against Dawes alone. It was admitted that the case would have been different if the words of the instrument had been, to enter up judgment against "us or each of us." In the course of the argument, the distinction as to the effect of a joint and several covenant, as stated by *Parke, B.*, in a late case of *King*

v. Hoare,^e was adverted to. "Each party to a joint contract," (said the learned baron,) "is severally liable in one sense, that if sued severally, and he does not plead in abatement, he is liable to pay the entire debt; but he is not severally liable in the same sense as he is on a joint and several bond, which instrument, though one piece of parchment or paper, in effect comprises the joint bond of all, and the several bonds of each of the obligors, and gives different remedies to the obligee." In support of the rule it was contended, that the words "and each of us" could not be rejected as surplusage, and that there were authorities for holding the word "each" to be a word of severance,^f and for reading the word "and" as if it had been "or"^g when necessary to give effect to the intention of the parties.

The court was unanimously of opinion, that the language of the instrument was joint throughout, and excluded the supposition that the intention of the parties was, that judgment should be entered up against one only. The plaintiff was bound to pursue the authority given by the warrant of attorney, and could not enter up judgment against Dawes alone. The rule was therefore discharged, but without costs.

REMUNERATION OF SOLICITORS.

PRINCIPLES OF TAXATION.

THE inadequate remuneration^h for important professional services has often been noticed by the Master of the Rolls, and in all cases wherein no more than the just fees have been allowed, his lordship has refused to disturb a taxation merely because some errors have been discovered in particular items, but where on the whole the amount has not been larger than sufficient. This equitable consideration of the claims of practitioners was much considered by his lordship in the case of *Lucas v. Peacock*, 8 Beav. 1, to which we lately adverted, (see 32 L. O., 332.)

We have now to direct the attention of our readers to the recent case of *Davenport v. Stafford*, in the same volume of Mr. Beavan's Reports, p. 503. It appears that in the year 1815, a bill was filed, praying for an administration of an estate, and for the

^d *Dalrymple v. Fraser and Dawes*, 2 Com. Bench, 698.

^e 13 Mees & W. 494.

^f *Kew v. Rouse*, 1 Vern. 353.

^g *Swift v. Gregson*, 1 Term R. 432.

usual accounts of the estate possessed by the executrix. After the death of one of the parties, a bill of revivor and supplement was filed, and other parties were added, who prayed an account of the personal estate.

The cause was heard in 1830, and a reference was ordered to the Master. And in 1840, a petition to rehear the cause was presented, on the ground that the decree was erroneous in stating that the petitioners had admitted assets sufficient to pay what might be due from their testatrix.

A motion being made to discharge the order for a rehearing, various questions were raised before the Master of the Rolls regarding the solicitor's charges for certain attendances, which it was alleged had not been strictly or properly made. His lordship, after deciding the other points in the case, proceeded to say, with reference to the question of costs:—

"I have been informed, that solicitors frequently charge for particular acts of business, which, upon the occasion to which they relate, may not have been necessary or required for the interests of the client, and this, because, in the taxation of costs for the whole business done, such charges are allowed, whilst the charges allowed for other services of the utmost value and importance, truly rendered to their clients, are so inadequate, that unless some compensation were allowed in another way, no adequate remuneration would, upon taxation, be given for the transaction of the whole business.

"It is much easier to censure than to remedy this state of things, which, under all the circumstances, is more to be regretted than blamed. The blame, which there may be, is more with higher authorities than with the solicitors, who, having regard to the rules of taxation, cannot help themselves. The remedy, if any is to be found, must be had by the discovery of some improved mode of remunerating solicitors, by which the remuneration may, on every occasion, be made adequate to the real and just value of the important services which are rendered

Whilst the Master of the Rolls thus liberally exculpates the solicitors from the blame attached to the present system of taxation, we are bound also, on the part of the profession, to say, that his lordship has always shown a disposition to consider any suggestions which could be offered whereby the objectionable part of the present practice might be avoided, and justice done as well to the practitioners as to the suitors.

THE PRIVILEGE QUESTION.

JUDGMENT OF THE COURT OF ERROR IN "HOWARD v. GOSSETT."

We are not aware that it is intended to bring the judgment of the Court of Exchequer Chamber upon the privilege question under the review of the House of Lords; but we should be glad to find some opportunity afforded for the reconsideration of the question, as, with the profoundest respect for the six judges, by whom the decision of the Court of Queen's Bench was reversed, we must be allowed to think their judgment on this matter altogether unsatisfactory.^h

If the principles upon which this decision is founded are to prevail, we can scarcely conceive any exercise of power, which the House of Commons may think fit to claim under the name of privilege, which may not be compassed and enforced.

The form of the warrant under which the Serjeant-at-Arms acted and subsequently justified, is already before our readers, (*ante*, page 361,) and it was properly admitted in the court below, as well as in the court of error, that upon the validity of the warrant the defendant in the action must stand or fall. The judgment of the Court of Queen's Bench was given on the ground of a defect in the warrant, and in the judgment of the court of error it is expressly stated, that the question to be decided is "whether the warrant was defective or not." Our readers will, no doubt, recollect, that the warrant did not contain any adjudication of a contempt committed by Mr. Howard. It was simply a naked direction to take him into custody, by an order of the House of Commons. The order here referred to, was set forth in three of the defendant's pleas, and in the judgment of the court of error it is observed, that it was properly admitted on behalf of the defendant, that he could not justify under the order of the House, *independently of the warrant*, because the order authorized no particular person to take the plaintiff into custody. Still, the judgment in error assumes, that the defendant is connected with the order of the House although not named in it, and because the order adjudicates a contempt, the order which is not disclosed in the warrant is supposed to give validity to the warrant. The contention on the part of the defendant was, that the warrant was good, as disclosing sufficiently the will and pleasure of the House, that the plaintiff should be arrested. The court of error held it to be good, on a totally different ground.

The validity of the warrant, says the court of error, depends mainly upon the point "on what principle is the instrument to be construed? Is it to be examined with the strictness with which we look at the warrants of

^h See the judgment, taken from the shorthand writer's notes, printed by order of the House of Commons, *ante*, p. 387.

magistrates or others acting by special statutory authority and out of the course of the common law; or is it to be regarded as the mandate or writ of a superior court acting according to the course of the common law?" All the three judges in the court below held it to be void, because it did not show a sufficient authority on the face of it. Mr. Justice Coleridge, in the commencement of his judgment in the court below, says:—"The warrant discloses, that the Speaker issued, (in pursuance of the order of the House, to send the plaintiff in custody,) a command to the defendant to take him into custody, but it does not disclose that the party was charged with any offence, neither does it expressly direct the Serjeant-at-Arms where to take the body of the plaintiff, or how long to detain him. If, for the House of Commons in this warrant, you substitute *any other authority* known to the constitution, it is quite clear that the warrant would be bad. The party sought to be arrested under it might have lawfully resisted it, or if arrested, would be discharged upon the return of such a warrant, under a writ of habeas corpus."

In a subsequent part of the judgment of the court of error, it is said that many of the writs issued by the superior courts do upon the face of them show the cause of their issuing, whilst others do not, and instances a writ of *capias ad respondendum*, issued before the passing of the 1 & 2 Vict. c. 110, which stated no original writ, no affidavit of debt, nor any plea commenced before the *capias* issued, and was still unquestionably valid.

Accepting this as a test by which to try the warrant in the present case—what does it prove? The fact of the *capias* not stating the original writ does not seem to have much application to the present warrant, which is objectionable for want of substance, and not form. With respect to the *capias* stating no affidavit of debt, the *capias* is not at all founded upon an affidavit of debt, and it was by the indulgence of the courts only, that when the *capias* became the first process of the court the arrest was discontinued and the *capias* served on the defendant, which was at length sanctioned by various acts of parliament. When the oath was first required to authorise the arrest, the old form of *capias* was continued, and the *ac etiam* was added, and the sum sworn, which was then directed to be marked on the back of the writ. Surely here the defendant had sufficient intimation of the cause of his arrest. As to the observation, that the *capias ad respondendum* states no plea commenced before the *capias* issued, the *capias* was the substantial commencement of the action.

The judgment in error proceeds:—"So writs of attachment from superior courts do not state the previous steps of a charge of contempt, the rule of court that they should issue, or the nature of the contempt. That issued from the Common Pleas, (not against officers of the court merely, but against individuals,) simply orders the sheriff to bring the party into court on a certain day, to answer to her Majesty of and con-

cerning those things which on her behalf shall then and there be objected against him." As remarked by Sir Fitzroy Kelly, on his argument in the Queen's Bench, the present warrant does nothing tantamount to this. But what becomes of the argument when it is found, that on the back of the writ of attachment issued in the Common Pleas is contained the following endorsement:—"Doe v. Roe. For nonpayment of 8l. 4s., costs taxed by Master ^{pursuant to a rule of court dated} day of 18."

The form of the attachment itself is as old as Magna Charta, and the form of the endorsement shows the superior courts have a regard for, and do value, the liberty of the subject, and do not use for the purpose of abusing any form of process committed to them.

There is a passage in the judgment in error which we almost grieve to find in it:—"It appears, indeed, that if a writ in a superior court expressed *no cause at all*, it would be legal, and the defendant not bailable, according to what Lord Coke says in the *Brewers' case*, 1 Roll R. 134." But where is there to be found an instance of a commitment by a superior court expressing no cause at all? In the case referred to, Lord Coke spoke not of a commitment by a superior court, but his *obiter dictum* is of a commitment by himself, "*Et si jreo commit na home il n'est bailable per aucun else nil cause soit declare*," which must be intended to be for a contempt in court, without warrant, and with which another judge or tribunal would not meddle. As observed by Mr. Justice Coleridge, in his judgment in the court below, a warrant expressing no cause, from whatever authority emanating, is void, and would be a grievance within the 5th section of the petition of right, which recites, "that divers of the King's subjects had of late been imprisoned without any cause shown, and when for their deliverance they were brought before the King's justices by his Majesty's writs of habeas corpus, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, *no cause was certified*, but that they were detained by his Majesty's special command signified by the Lords of his Privy Council, and yet were returned back to several prisons without being charged with anything to which they might make answer according to the law."

The judgment in error proceeds:—"It was a mistake to assert, as was done at the bar, that an adjudication of a contempt was a necessary part of every committal for a contempt, and that an attachment would be invalid without it. It is not so in the superior courts of common law, as has been stated, nor in the Court of Chancery, as Lord Lyndhurst has lately decided after an inquiry into precedents, *Ex parte Van Sandau*, 1 Phill. Rep. 605."

Enough has already been said on the subject of commitments for contempt by the superior courts of common law. Where is the precedent for any committal *by warrant without cause*? The allusion to committals for contempt by the

Court of Chancery calls for a few remarks. In the Court of Queen's Bench in *Green v. Elgie and another*, (5 Queen's Bench Reports, 99,) it was expressly held, that a warrant of commitment by the Court of Review and the order recited in the warrant, were bad, as not containing any proper adjudication of a contempt, nor showing how the party committed might clear himself, and that decision has never been overruled. In Mr. Van Sandau's case, Lord Lyndhurst determined the warrant bad, on the ground that the seal of the court was not affixed to the warrant, and that the action lay, and awarded 10*l.* to the plaintiff as damages. What fell from his lordship on the subject of the precedents in Chancery can in no respect be considered as impeaching, and certainly not as overruling the express decision of the Court of Queen's Bench, in *Green v. Elgie*, Lord Lyndhurst having, (in Phill. R. 607,) first said,—“If this form of order had been used for the first time upon the present occasion, and there were no precedents to appeal to on the subject, I should have come to the conclusion that the order was insufficient;” but after having referred to several precedents, he said,—“It is unnecessary to proceed further in citing precedents of this nature, for although I consider the form of the order adopted by Lord Cottenham, in *Lechmere Charlton's* case, and the other forms to which I before referred, as the more proper and correct forms; yet I cannot venture, in the face of these proceedings, to discharge the present order as insufficient and invalid.” His lordship was here only considering whether the order, as an order in bankruptcy according to the precedents in the Court of Chancery, was so entirely invalid that he must give Mr. Van Sandau the costs of it; but though the order in the Court of Review might not be a bad order to that extent, a committal under it would have been bad in a court of law, as the Court of Queen's Bench decided in *Green v. Elgie*.

The judgment of the Court of Error proceeds:—“We are clearly of opinion, that at least as much respect is to be shown and as much authority to be attached to the mandates of the House as to those of the highest courts in the country, and if the officers of the ordinary courts are bound to obey the process delivered to them, and are therefore protected by it, the officer of the House of Commons is as much bound and equally protected.”

To this it may be observed, that the writs in superior courts where there is any mere irregularity in issuing them, are a protection to the officer, because those who so issue them are amenable to the party and to the court, but upon process from either house of parliament, nobody is amenable but the officer executing an illegal warrant. And, as observed by Mr. Justice Coleridge in his judgment in the court below, the test is, whether the defect in the warrant goes to the jurisdiction of the authority issuing it, and, as he has shown, there is no authority in the kingdom that can, unless contrary to *Magna Charta*, as amplified by the

petition of right, issue a warrant *without cause*.

The judgment thus sums up:—“The House had an undoubted right to order the plaintiff into custody, and to have him brought to the bar, and had also as much right over its own forms as any other court has, and it must be presumed that this is the right form, being that which it has chosen to adopt.”

Upon this part of the judgment in error it need only be observed, that the objection to the warrant is not the possible want of jurisdiction, but that no cause whatever was shown for the arrest upon the face of the warrant, and that the House of Commons has no more right to create forms, inconsistent with the established law of the land and to *Magna Charta* and the Petition of Right, than it has to create new privileges: neither could any court do so or has any court ever attempted it. It may be added, that if such a warrant be illegal, it cannot be in the right form, although the House of Commons has chosen to adopt it.

Neither the superior courts of justice nor the houses of parliament can create modern forms inconsistent with the law of the land.

Having thus examined the several propositions upon which the judgment in error is founded, we know not how we can escape from the conclusion, that if this judgment be correct, the House may order its officer to arrest any man and bring him in custody before them at its mere will and pleasure. The personal liberty of every commoner in the land is thus placed within the irresponsible power of the House, and whether charged or uncharged, guilty or innocent, contemptuous or obedient, the House may imprison him. If such an authority is well founded, it is inconceivable that it should not have been discovered at an earlier period.

NEW COUNTY COURTS ACT.

COSTS OF PRACTITIONERS.

[We give insertion to the following letter, though extending beyond the limit we can usually spare for such communications, on account of the importance of the subject, public no less than professional, and in the hope that some of our correspondents may be induced to state their views of Mr. Lamb's suggestions, and conjectures.]

To WM. TOOKE, Esq.

MY DEAR SIR,—A cursory consideration of the New County Courts Act, leads me to think that several material provisions have been omitted, and that great ambiguity prevails as to the right construction of the clauses regulating the duties of and remuneration to the attorneys who shall practice in those courts. In my doubts I know of no one to whom I could address a few short observations on the subject with greater satisfaction than to yourself, whose uniform kindness towards the junior

members of that branch of the profession of which you have been so long a leading practitioner, must entitle you to the deference which high principles and great experience justly demand.

It is impossible to contemplate the probable effect of the many and great changes which have been and are still going on in the practice of the law, without frequent and serious apprehension regarding the ultimate results of so much experiment upon a fabric grey with the institutions of ages, and without fearing that in the attempt to substitute more popular measures, those now adopted may not really end in a denial of justice altogether. To the superficial observer, any attempt to bring prominently forward so delicate a subject as the duties and remuneration of an attorney, may be supposed to amount only to a futile attempt to sacrifice the interests of the masses to the pecuniary claims of a class. Right-minded and considerate men, I am sure, will come to another conclusion, and will perceive, that unless the labourer's hire be adequate to his toils and the department of his toil well-defined, the work is likely to remain unperformed, or to be effected in an inadequate or unworthy manner. These observations have been elicited by an endeavour to ascertain the precise nature of the duties and rewards of an attorney under the act, to which allusion has already been made, the 91st section of which affords most of the information which is to be acquired upon the subject, but whether the act contemplates the duties of attorneys to be confined to that of advocating the cause in court, or intends to conjoin with that duty the functions ordinarily fulfilled by them in bringing a cause to issue, does not clearly appear. Adopting the first position, there is manifestly an inconsistency in the mode in which they are treated as to fees, the first part of the section giving them none where the debt or claim is under 40s., and no more than 10s. unless such debt or claim shall be more than 5*l.*; that is, if I rightly understand it, that in all cases where the debt or claim shall amount to more than 40s., and be less than or exactly reach the sum of 5*l.*, the attorney shall receive 10s., unless the judge disallow any payment whatever to him, which he has a right to do under the concluding clause of the section in question. The section further directs, that no more than 15s. shall be allowed to an attorney in any case within the summary jurisdiction given by the act. This would be plain enough if the summary jurisdiction were defined, and made to apply to the entire section. I apprehend the summary jurisdiction to be that of the judge without the intervention of a jury, under section 69; and if so, the payment of fees to an advocate-attorney where a jury is impanelled, is left wholly unprovided for by the act. The last clause of the section, however, expressly declares, that the expense of employing a barrister or an attorney shall not be allowed on taxation where less than 5*l.* is recovered in case of a plaintiff, or less than that amount is claimed in case of a defendant, which

is evidently intended to discourage resort to an advocate in all cases under 5*l.* The taxation mentioned I presume to be, that between party and party and not attorney and client, the latter of whom is, therefore, left in this case to pay the advocate's fee without being able to recover it from his defeated opponent.

If, however, the act do not contemplate any limitation to the ordinary duties of an attorney, but intends, in cases not forming an exception, that the burthen of advocating the cause should be laid upon him in addition to those duties, then a greater evil is to be apprehended, for it is not clear in such a case whether the 10s. or 15s. are to be his entire remuneration, or whether those payments are intended to be his recompense for such additional labour only. The words in the act to which these payments apply are duplex; first, no person not being an attorney shall be entitled to have or recover any sum of money for "appearing or acting on behalf of any other person in the said court," and no attorney shall be entitled to have or recover "therefore" any sum of money, unless the debt or damage claimed shall be more than 40s. So far it would seem that the words had reference to compensation for appearing or acting *in court*, and nothing more, and would not deprive an attorney of any fees to which he might be entitled for work and labour relating to such debt or damage not done in court; compensation for which would be left to the ordinary rules of practice on that subject, and have relation as between attorney and client to the *quantum meruit* of the former. As to costs in the cause between party and party, the act so construed would leave them to the ordinary statutes giving costs, and to the settled principles of taxation to be worked out by the taxing officer of the court; but the section goes on in the same sentence to enact, that no attorney shall be entitled to have or recover more than 10s. "for his fees and costs," unless the debt or damage shall be more than 5*l.*, or more than 15s. in any case within the summary jurisdiction given by this act. The common sense construction of this would be, that the fees and costs allowed in cases reaching the specified amount must be of the same nature and for the same services as those prohibited below that amount, and yet the change in the language of the sentence is remarkable. In the one case it is "any sum of money therefore," *i. e.*, for appearing or acting in the court, and in the other "for his fees and costs" generally, which might mean that the entire costs in the cause (which possibly may be assumed to be between party and party) should be considered as sufficiently recompensed on receipt of the sum of 10s. or 15s., as the case may be, while the costs to which the attorney might be entitled under the smaller claim (which the act leaves untouched, except as to appearance or acting in court,) would be settled by the ordinary rules of practice, and might possibly amount to ten times the sum.

To put a case: I have a client who claims of A. B. 18*l.* for instruction in music, being the

balance of a disputed account. Much trouble has arisen in investigating the cause of action and means of rebuttal which the debtor may set up, and in examining witnesses prepared to corroborate the claimant's statement, rendered necessary by such assumed defence. I advise my client to proceed, and in consequence receive his instructions to enter a plaint. I have done so, and the officer of the court has served the defendant with a summons upon which debt and costs (the latter being only those fees which are payable to the judge, the clerk, and the bailiff,) are indorsed. Defendant pays into court 5*l.*, of which the plaintiff has notice, and he has demanded a jury, having first made the requisite deposit. The case comes on for trial, when I appear for the plaintiff, my client, and obtain a verdict. We will say nothing of the length of the case, which might reasonably be supposed to occupy the greater part of a day. First, what remuneration am I entitled to receive from my client, and then to what extent will the act enable him to get repaid by the defendant, whose resistance to his just demand has occasioned the expenditure? Should it be decided that this is a case within the summary jurisdiction of the act, which it appears to me *not* to be, it might then be contended that I am not entitled to recover more than 15*s.* for my fees and costs, although perhaps 5*l.* would scarcely be a recompense for the labour undergone; but whether the 15*s.* are to be regarded as the costs between party and party only, and recoverable on taxation by the plaintiff from the defendant, does not appear. The language of the act would lead the student to assume that such was not the case, for it will be observed that the act does not speak of the *plaintiff's* costs, but of those of the *attorney*, and it is certainly open to the construction that they form the entire remuneration of the attorney who has appeared or acted on behalf of the plaintiff, and from whom the act will not permit him to recover any other fees and costs.

On another state of facts, assume that I had made progress in the suit to the day of hearing, when I had, by the desire of my client, instructed another attorney to appear as advocate, who would therefore be entitled to 15*s.* from myself as his employer. In this case, although I had not appeared in court for the plaintiff, it might fairly be contended that I had acted for him. Does the act intend that I shall also be entitled to 15*s.* as well as the advocate, or does it preclude me from recovering anything for my labour from my client? Again, let me suppose that I had carefully abstained from doing anything which might be construed into an appearance or act in the court; that I had advised my client carefully, got up the evidence, and stated his case upon paper, which he had taken to the clerk of the court, who had therefrom framed the plaint upon which the summons had issued; and that in every subsequent stage of the proceedings I had continued to afford my guidance and advice to my client, under which he had acted, and on the day of trial he had himself carried the brief to an at-

torney appearing in court as general advocate, who had obtained a verdict for him. Under these circumstances, it surely cannot be contended that my client is not liable to me for work and labour on a *quantum meruit* principle; but if he be so liable, it is plain that the extent of my demand might exceed the debt itself, and thus by my abstaining from undertaking the performance of any act which might be construed into an appearance or act in court, I might become entitled to ten times the amount of remuneration which another would be able to claim who appearing as advocate in court had performed the same labour and much more. The supposed case is upon the assumption that the trial by court and jury is a case within the summary jurisdiction given under the act, which is not perhaps the true construction; but it is obvious that the same results might arise in a trial by the court alone. It is worthy of remark that in cases not within the summary jurisdiction no costs are prescribed.

Let us now suppose that on service of the summons the defendant wishes to settle the claim. I presume he may do so either through the intervention of the officer of the court, by payment to the plaintiff, or to myself as his attorney, of the debt and costs indorsed on the summons; but whether in one or either of these modes, as the summons shows that no costs to the attorney are intended to be indorsed, it is plain that the defendant is bound to pay him nothing, and as this is likely to be the result in 99 cases out of every 100, it is also clear that the attorney must either go without remuneration altogether, or seek it from his client, which the act probably intends to prevent.

On the whole, perhaps, you will agree with me in construing the act to intend the non-interference of attorneys altogether in every part of the case, except that of advocating it in court; and also that those who so employ themselves will necessarily be precluded from receiving any other compensation than the fees and costs prescribed by the act.

This, I apprehend, must therefore create a distinct class of practitioners, *quasi* barristers; and that this is probably the true intent of the measure, would further appear from the fact that barristers are prohibited from practising, except they are instructed by an attorney, who, being deprived by this act of the accustomed emoluments arising from the machinery of a lawsuit, is thus permitted to avail himself of the profits of an advocacy of causes in this court. The burthen of bringing causes to issue, which has hitherto devolved upon attorneys and pleaders, the act appears entirely to cast upon the clerk of the court, who, it is assumed, will receive his instructions directly from the plaintiff and defendant; and also upon the judge, who must on the hearing of the cause ascertain the exact facts at issue and charge the jury accordingly, where that mode of trial is adopted. If he act upon his summary jurisdiction, the dispute and its adjudication must alike rest in his own discretion.

Whether persons having claims upon others, as tradesmen and the like, either can or will burden themselves with the task of stating such demands in a way sufficiently comprehensive for the purposes of adjudication, and of carrying them up to trial in the manner prescribed by the act, must for the present, at least, be deemed problematical, but should their necessities or convenience require the aid of an attorney (who from his education and devotedness to such labours certainly has the strongest claim to the employment) it is surely not too much to expect that an act of parliament, such as the present, should not leave his right to remuneration doubtful, or circumscribe it to an amount altogether unworthy of the service required from him.

Assuming that my view of the duties of attorneys as advocates is correct, it does appear desirable that such practice should be kept distinct from that of the general practitioner, and that such advocate-attorneys should make the scene of their labours the entire circuit, without which they will probably fail to learn the practice of the court, or to establish that uniformity of proceeding so desirable for rendering it as available to parties as it ought to be.

Hoping that this brief recapitulation of the difficulties which have occurred to me on a perusal of the act, may elicit from yourself and others some observations on the suggestions I have ventured to make, and on this important statute generally, I remain, my dear sir,

Your's most truly,

SAMUEL B. LAMB.

Reading, 26th March, 1847.

POWER TO APPOINT NEW TRUSTEES.

POWERS for this purpose are frequently, I may say generally, deficient in not providing for the disclaimer or retirement of *all* the trustees.

It is usual to provide, that in certain specified events, "it shall be lawful for the trustees or trustee for the time being, or the executors or administrators of the last surviving or continuing trustee," to appoint, &c.; or, "for the then surviving or continuing trustees or trustee, or the executors, &c., of the last surviving or continuing trustee."

Now, these clauses obviously do not meet the case of all the trustees disclaiming the trust; or if they accept it, the latter of the two clauses, at any rate, does not provide for their all subsequently wishing to retire.

In a will especially it is of the greatest importance that both events should be provided for, as it is not an uncommon occurrence for trustees so nominated to decline to take upon themselves the responsibilities of the trust. This defect was exhibited in the case of *Sharp v. Sharp*, 2 Barn. & Ald. 405. A testator provided, "that in case either of the two trustees appointed by his will, should happen to die, or desire to be discharged from, or neglect or re-

fuse, or become incapable to act in, the trusts thereby in them reposed, before such trusts should be fully performed or determined, in such case it should be lawful for the survivors or survivor of the trustees or trustee so acting in the trusts, or the executors or administrators of the last surviving trustee," by any writing, &c., to nominate and appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, desiring to be discharged, or refusing, or becoming incapable to act as aforesaid.

The two persons named in the will as trustees disclaimed, and affected, in exercise of the power, to appoint others to perform the duties of the trust; but it was held that they were not authorised to do so, for the power did not extend to the disclaimer by both the original trustees. *Abbott, C. J.*, said,—"By the word survivor I understand merely the trustee continuing to act; for it seems to have been throughout the intention of the testator that in case of the death or incapacity or refusal of some one of the trustees, the remaining trustee who had been named by him, and who had been the object of his confidence, should have the power of associating with himself some other person in the execution of the said trust. But it would be giving a much larger construction to these words than they fairly import, if we were to say that the trustees, in the event of the whole class declining to act, might nominate such other persons as they might think fit to perform their duties." *Bayley, J.*, also put the same construction on the word "survivor," and relied upon the use of the words "either" and "so acting."

With reference to the two clauses referred to at the commencement of this letter, it is to be observed, that, as shown by the above decision, "continuing trustees mean trustees, other than those wishing to be discharged, or going to reside beyond seas, in fact, other than retiring trustees; and therefore, that a sole remaining trustee, (or several trustees all wishing to retire at once,) cannot directly take advantage of a power so worded for the purpose of retiring from the trust, though if such sole remaining trustee appoint others to act with him, such newly chosen co-trustees can subsequently appoint another in the room of the person by whom they were so appointed.

If the power be given to "the trustees or trustee for the time being," it is apprehended that it would meet the case of a sole trustee, or all the trustees retiring from the trust, though not the case of their all renouncing, as a person who has never accepted the office cannot be included under the description of a "trustee for the time being."

The following form settled by a learned conveyancer recently retired from practice appears, as far as practicable, to meet every contingency:—

"Provided always, and it is hereby agreed and declared, that as often as any of the several and respective trustees hereby appointed or to be appointed under this power shall die, or go

to reside beyond the seas, or desire to be discharged from, or refuse, or decline, or become incapable to act in, the trusts hereby in them respectively reposed before the same shall be fully executed, it shall be lawful for the said , during her life, and after her decease for the then surviving or continuing trustees or trustee, or the executors or administrators of the last surviving or continuing trustee, or if there shall be no such surviving or continuing trustee, for the person so going to reside beyond the seas, or desiring to be discharged, or refusing or declining as aforesaid, his executors or administrators, by any deed or deeds to be by her them or him sealed and delivered in the presence of and attested by two witnesses, to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or going to reside beyond the seas; or desiring to be discharged, or refusing or declining or becoming incapable to act as aforesaid."

The words in *italics* in the above form are inserted to provide for the contingencies to which I have referred.

300.

SELECTIONS FROM CORRESPONDENCE.

RECOGNITION OF A TERM OF YEARS.

By an indenture made in the year 1717, a term of 1,000 years was created: the deed, however, was lost: but some time after the term was assigned to a trustee for a purchaser of the estate in question. Upon a bill for specific performance and for an indemnity against dower, a query arose, whether or not this term could be set up in bar to the vendor's wife's thirds, in case she survived him? The defendant filed a cross bill, in which this term was set up as a good bar; and upon the hearing, it was urged for the defendant in the latter suit, that the deed having been lost, the term it created could not be set up against the widow; for the reason, that without production of the deed it could not be discovered whether the term had been properly created or not. This latter argument coincided with the opinion of an eminent conveyancer, before whom a case had been tried. In making his decision, however, V. C. Knight Bruce considered the assignment to a former vendee's trustee as an acknowledgment of the validity of the creation: and he held such recognition to be good evidence of the legality of the term, and where a *cessat executio* might at any time hereafter be effectually grounded against the widow.

It has been said, that a purchaser is not obliged to be satisfied with a term for a protection, in consequence of the setting up of it being attended with much expense, which a purchaser has no right to have entailed upon him: but assuming that the defendant shall in this particular instance be subjected to the burden he is now saddled with, it must be hoped that the Vice-Chancellor's idea is cor-

rect in presuming validity through the assignment, and that the counsel's opinion was on the other hand wrong, in stating that the creation must of necessity be shown; for if any equity judge, before whom the widow's bill for dower should ever be presented, should be of the latter opinion, and require the production of the deed of 1717, the present owner of the property will have no means of setting aside her claim.

A. B.

A CURIOUS CASE AND OPINION.

INTELLECT DEPENDING ON THE BEARD

A CASE was some few years since laid before a conveyancer of great eminence, (accompanied with an abstract of title,) requesting his opinion on behalf of a purchaser, whether it would be necessary for him to take any steps to prove the sanity of the vendor, who was a man of eccentric habits, and, amongst other things, wore a long beard. The time fixed for the completion of the contract was the 1st of February.

The following opinion was given:—

"As far as the statement goes, the question seems to me to amount to this—does competency depend on fashion? because, if so, a legal sage in Lord Coke's time might be a lunatic in Lord Denman's—a philosopher in Turkey might be a bedlamite in England. The question would soon afterwards be started, whether mustachios were evidence of insanity, and subsequently whether a huge pair of whiskers were so.

"As one perfectly indifferent and not abounding in any of the three, I incline to think from the samples which have come in my way, that the exuberant cultivation of either of the two latter is a greater proof of folly than that of a venerable beard. The point, however, may be considered, 1st, classically; 2nd, legally; 3rd, politically; 4th, phiziologically.

"1st, The best authors have ever treated the beard with the respect due to wisdom.

"His tawney beard was th' equal grace,

"Both of his wisdom and his face.

Strange that the same emblem should create a suspicion of an unsound mind.

"2nd, As the proprietor of this dignified appendage has given it so much law, it seems no less strange that this very circumstance should be a proof of the illegality of his acts.

"3rd, Were the question now submitted to a jury, when every man feels it his duty to lean more or less to one or the other of the great parties in the state, the balance of justice might incline one way or the other, according to the composition of the jury. The appendage under consideration has certainly a Conservative cast, yet history is equally balanced. Of that renowned hero already quoted, it is said—

"His hoary meteor did denounce,

"The fall of sceptres and of crowns.

On the other hand, the author of Old Mortality informs the world, that "General Dalziel remained unshorn in honour of the Stewarts." The *Whigs*, I fear, would deem such a production an undue encroachment on their interests, and the Economists would certainly be unfavourable to that which affording a *supply* so far exceeding the *demand*, necessarily sets all their irrefragable maxims at defiance. But the Radicals would doubtless feel bound in honour to uphold that which has most unquestionably a *radical* origin; so that by the fortunate coalition of the two extremes, Conservative and Radical, the Nazarethship would, in all probability, be preserved unhurt.

"4th, As the intellect is not considered to be properly developed until possession of a beard, the length of the one in question cannot be viewed as a proof of the want of intellect. There is certainly an old saying, "as mad as a March hare," and there can be no doubt that these hairs have stolen a march upon their fellow citizens; but I rely upon the contract being settled by the 1st of February to get rid of this difficulty."

EXAMINATION OF PARTIES UNDER THE SMALL DEBTS ACT.

To the Editor of the *Legal Observer*.

SIR,—Now that the great "Small Debts Act" is actually inflicted on the country and the profession, it becomes us to consider what will be its real operation and tendency. It undoubtedly is a revolution in the juridical institutions of this country. It breaks through, *sans cérémonie*, the rules established by "the wisdom of our forefathers" as barriers against fraud and crime, and whose wholesale opera-

tion is still, by those who see their working, continually acknowledged; and in their place it enunciates principles the result of which, if acted upon, I dare not anticipate. What is to be said, for instance, of the power to examine parties to suits and their wives? Every one knows how in all cases of personal dispute the "yes you did," "no I didn't," is bandied about with very little regard to the truth of the averments; and so will it be in these courts; the "oath," by being perpetually and easily taken, will lose its solemn obligation; and how very often does interest induce a person (even honestly) to think he is right, when the fact is otherwise? If you add to this, that in the excitement of a trial when either of the litigants is flushed by impending victory, or mortified by impending defeat, it does not take much to persuade him to risk statements which may then decide the balance or turn the scale, but which in more sober moments he would hesitate before uttering.

The clause empowering wives to give evidence for or against their husbands, has, I think, an especially pernicious tendency. For evil, or for good, the influence of husbands over their wives must be taken as paramount; and how may this power be used by unprincipled parties; what opportunities does it give for "corroboration." Besides, where is the wife of proper spirit who would not support through thick and thin her husband in any quarrels he might choose to be embroiled in? Legislation should always be, and until now always has been, regulated by a due regard to human weaknesses.

FAS.

[Observations on this subject will be found at p. 409, *ante*.—ED.]

EXPENSE OF ADMINISTERING JUSTICE IN THE COURT OF CHANCERY.

1. Payments from the Suitors' Fund.

	£	s.	d.	£	s.	d.
Paid Lord Chancellor's salary	-	-	-	10,000	0	0
— Vice-Chancellor Bruce	-	-	-	5,000	0	0
— Vice-Chancellor Wigram	-	-	-	5,000	0	0
— Eleven Master's salaries, at 2,500 <i>l.</i> per annum	27,500	0	0			
— Accountant-General's salary as Master	600	0	0			
Total Masters				28,100	0	0
— Accountant-General's salary	900	0	0			
— Expenses of office, office-keeper, rates, stationery, &c.	450	0	0			
— Twenty-six Clerks' salaries, less a proportionate part accrued between the death of one and the appointment of another	6,881	16	11			
Total Accountant-General's office				8,231	16	11
— Two Examiners' salaries (in part), remainder charged on the Suitors' Fee Fund	600	0	0			
— Retired Examiner's Pension	200	0	0			
— Retired Examiner's Clerk's Pension	100	0	0			
Total Examiners				900	0	0

	£	s.	d.	£	s.	d.
Paid Clerk of Affidavit's increased salary . . . . .	.	.	.	300	0	0
— Four Clerks to assist in the Report-office . . . . .	.	.	.	369	5	7
— Officers of the Lord Chancellor's Court :						
Usher	300	0	0			
Court-keeper	90	0	0			
Persons to keep order	160	0	0			
Tipstaff	108	6	8			
Serjeant-at-Arms	553	17	7			
— Officers of the Vice-Chancellor of England :						
Secretary	500	0	0			
Usher	200	0	0			
Trainbearer	100	0	0			
— Officers of the Vice-Chancellor Bruce :						
Usher	200	0	0			
Trainbearer	100	0	0			
Court-keeper	80	0	0			
— Officers of Vice-Chancellor Wigram :						
Secretary	300	0	0			
Usher	200	0	0			
Trainbearer	100	0	0			
Court-keeper	80	0	0			
Total Officers of the Courts				3,072	4	3
— Solicitor to the Suitors, in lieu of Costs	600	0	0			
Disbursements	58	3	10			
				658	3	10
— Surveyor	-	-	-	38	16	8
— Costs of Contempt (under Sir Edward Sugden's Act	-	-	-	190	0	11
— Compensation to late Officers of the Court of Exchequer	-	-	-	5,155	10	0
— Expenses of Courts, Registrars' offices, Masters' offices, Report and other offices, for repairs, rates, stationery, coals, candles, servants' wages, &c.	-	-	-	4,532	6	3
				71,548	4	5

2. Payments from the Suitors' Fee Fund.

	£	s.	d.	£	s.	d.
Compensation to five Masters, at 725 <i>l.</i> per annum	3,625	0	0			
Eleven Masters' Chief Clerks' salaries, at 1,000 <i>l.</i> each	11,000	0	0			
Eleven Masters' Junior Clerks' salaries, at 150 <i>l.</i> each	1,650	0	0			
Total Masters				16,275	0	0
Salaries to ten Registrars	15,900	0	0			
Compensation to ditto, under 3 & 4 Will. 4, c. 94, s. 48, and 5 Vict. c. 5, s. 53	4,000	0	0			
Salaries to fourteen Registrars' Clerks	6,800	0	0			
Compensation to one ditto under 5 Vict. c. 5, s. 53	11	19	2			
Pension to retired Registrar's Agent, under 3 & 4 Will. 4, c. 94, s. 48	273	0	0			
Total Registrars				26,984	19	2
Master of Reports and Entries' salary	1,000	0	0			
Clerk of Reports	200	0	0			
Two Clerks of Entries	250	0	0			
Compensation to one Clerk of Entries	100	0	0			
Salaries to Clerks of Accounts	2,550	0	0			
Compensation to late Master of Reports and Entries	2,250	0	0			
Total Report Office				6,350	0	0
Part of Examiners' salaries to two Examiners, at 700 <i>l.</i> per annum	1,400	0	0			
Compensation to one Examiner, under 3 & 4 Will. 4, c. 94	200	0	0			
Salaries to Examiners' two Clerks, at 150 <i>l.</i> per annum	300	0	0			
Compensation to one Examiners' Clerk	200	0	0			
Total Examiners				2,100	0	0
Two Clerks of Affidavits' salaries	-	-	-	650	0	0

	£	s.	d.	£	s.	d.
Salaries, &c., under 5 & 6 of her present Majesty, c. 84 :						
Two Masters in Lunacy	4,000	0	0			
Travelling expenses	812	9	6			
Seven Clerks to Masters in Lunacy	2,011	0	7			
Rent of Premises	330	0	0			
Expenses of Offices	646	13	6			
Salary of Secretary of Lunatics	800	0	0			
Four Clerks in Secretary's Office	710	0	0			
Compensation to late Commissioners in Lunacy	480	0	0			
Ditto to late Clerk of the Custodies	236	0	0			
Expenses of offices	401	10	3			
				10,427	13	10
Salaries, &c., under Act 5 & 6 of her present Majesty, c. 103 :						
Six Taxing Masters	12,000	0	0			
Six Clerks of ditto	1,500	0	0			
Clerk of Enrolments	1,200	0	0			
Three Clerks to ditto	750	0	0			
Four Clerks of Records	4,800	0	0			
Twelve Clerks to ditto	3,000	0	0			
Copy Money for writing and copying in the office of the Taxing Masters, Clerks of Enrolments, and Clerks of Records	6,627	3	10			
Rent of Taxing Masters' Offices	800	0	0			
Expenses of Taxing Masters, Enrolment, and Record and Writ Clerks' office, for stationery, coals, candles, ser- vants' wages, insurance, rates and taxes, and for furni- ture, &c.	1,357	15	0			
				32,052	18	10
Compensation for loss of Offices and Profits to the under- mentioned Officers, under 5 & 6 Vict. c. 103 :						
Three Six Clerks	4,733	15	0			
Twenty-two Sworn Clerks	29,743	1	3			
One Waiting Clerk	109	8	8			
Five Agents to Sworn Clerks	1,431	1	0			
Two Clerks of Enrolments	822	10	0			
Two Deputy Clerks of Enrolments, Deputy Record Keeper, and Agent to Sworn Clerk	2,285	8	4			
Secretary of Decrees and Injunctions	33	12	2			
Receiver of the Sixpenny Writ Duty	68	0	0			
Bag Bearer	42	16	0			
Chaff Wax	19	16	8			
Sealer	17	14	0			
Messenger	12	12	0			
Ten Masters' Junior Clerks (under the above two Acts)	1,716	14	4			
Clerk of the Public Office	300	0	0			
				41,336	9	5
				£136,177	10	3

The above statement is extracted from the Accountant-General's Annual Return to Parlia-
ment, showing the following results:—

Payments from Suitors' Fund	£71,548	4	5
Fee Fund	136,177	10	3

£207,725 14 8

This enormous sum (if right in amount) should be defrayed, not by the poor suitors of the
court, but out of the Consolidated Fund.

ATTORNEYS TO BE ADMITTED,

Easter Term, 1847.

[Concluded from page 396.]

Clerks' Names and Residences.	To whom Articled, Assigned, &c.
Jeffreys, Charles, Glandyfi Castle; Cardigan- shire; Denbigh; and Southampton St.	Isaac Gilbertson, Bala Samuel Edwardes, Denby
Jackson, Howard William M., 5 and 30, Lons- dale Square	A. S. Greene, Brighton

- Jull, George Montague, 88, Piccadilly . . . Francis Smedley, Jermyn Street
 Joachim, Bristow, 34, Gower Place, Euston Square; Lowestoft; and Park Street . . . Edmund Norton, Lowestoft
 Lamb, William Frederick, 1 Garden Place, Lincoln's Inn Fields; and Bristol . . . Robert Osborne, Bristol
 Lewis, James Price, 25, Coventry Street, Piccadilly; and Hertford . . . Philip Longmore, Hertford
 Lea, John Wildman Thomas, 1 Arthur Street, Gray's Inn Road; Wribbenthal; and Areley Kings . . . Edward Richmond Nicholas, Wribbenthal
 Lake, George, Mortimer Road; and De Beauvoir Town . . . John Lake, Lincoln's Inn
 Lambert, Alfred, 13, Upper Stamford Street . . . John Iliffe, Bedford Row
 Latcham, Charles, 2, Southampton Buildings, Holborn; and Clifton . . . Charles Arthur Latcham, Bristol
 Lumb, James, Whitehaven; Tavistock Place; and Featherstone Buildings . . . William Lumb, jun., Whitehaven
 Lucas, William, Wem . . . Jonathan Nickson, Wem
 . . . Samuel Walmesley, Wem
 Law, Robert Dalton, Manchester . . . Already admitted of the C. P. at Lancaster
 Mott, Henry, 6, Gordon Street, Euston Sqr. . . John Howard Williams, Bedford Row
 Moore, William George, 42, Lothbury . . . Joseph Moore, Lincoln
 Marsland, George, jun., 65, Milton Street, Dorset Square; Shrewsbury; and Margaret Street . . . Henry Hicks, Shrewsbury
 Mullings, Thomas, Cirencester . . . Joseph Randolph Mullings, Cirencester
 Marsden, Joseph Daniel, 14, Furnival's Inn . . . George Ledger Shaw, late of Friday Street
 . . . Frederick John Reed, Friday Street
 . . . George Philcox Hill, Brighton
 Molineux, Joseph, Cordwainers' Hall, City . . .
 Morris, George, jun., 5, Bedford Street, Bedford Row; Shrewsbury; and North Buildings . . . Charles Bowen Teece, Shrewsbury
 Nunn, John, Brecon; and New North Street . . . Philip Vaughan, Brecon
 . . . J. Blunt, jun., Lothbury
 Owen, Thomas, 21, New Ormond Street, Queen's Square; Carnarvon; and Islington . . . Edward Griffith Powell, Carnarvon
 Owen, James Charles, Wrexham . . . John Howard, late of Wrexham
 . . . John James, Wrexham
 Poole, William Thearsby, 7, Featherstone Buildings, Holborn; Carnarvon; Islington; and New Ormond Street . . . Richard Anthony Poole, Carnarvon
 . . . William Lowe, Tanfield Court, Temple
 Prescott, George William, Stourbridge . . . Rowland Price, Stourbridge
 Pollett, Thomas Faulkner, Manchester . . . Charles Cooper, Manchester
 . . . George Faulkner, Bedford Row
 Poole, William Tatchell Henry, 4, Featherstone Buildings; Stoke-under-Hamdon; Gray's Inn Place . . . John Slade, Yeovil
 . . . John Sherwood, King's Bench Walk
 Percival, Arthur, 8, Arthur Street, Gray's Inn Road; and Stamford . . . Thomas Hippiisley Jackson, Stamford
 Porter, George Twynam, 21, Lincoln's Inn Fields; and Winchester . . . George Twynam, Winchester
 Pratt, John Forster, Berwick-upon-Tweed; and Arthur Street . . . Robert Weddell, Berwick-upon-Tweed
 Pemberton, Stephen John, 18, Great Ormond Street; and Hexham . . . Thomas Johnson, late of Hexham
 . . . Richard Gibson, Hexham
 Payne, John, 22, Tavistock Place, Tavistock Square; Nottingham; and Judd Street . . . Edwin Eddison, Leeds
 . . . George Rawson, Nottingham
 Philby, Henry Adams, 29, Jewry Street, Aldgate; Loughton; and Bishopsgate Street . . . Henry Aston, New Broad Street
 Phillips, William, 23, River Street, Myddleton Square; Birmingham; and Boxworth Grove . . . J. Partridge, Birmingham
 Pollard, George Octavius, 41, Dorset Street, Portman Square . . . Powell and Co. New Square
 Rodwell, Henry Blyth, 61, Upper Norton St., Portland Place; and Store Street . . . Edward Norton, Diss
 . . . John Day, Margaret Street
 . . . Frederick Brown, Margaret Street

- Roscoe, William, 4, Holford Street, Claremont Square ; Nether Knutsford ; Lower Calthorpe Street ; Beaumaris ; and Myddleton Square Thomas Roscoe, Nether Knutsford
 Rogers, Edward, 14, Brunswick Place, Barnsbury Road ; and Green Terrace Thomas Rogers, Helston
 Rawlins, Williams, 53, Lincoln's Inn Fields ; and Norfolk Street T. Rogers, jun., Reading
 Read, James, jun., Mildenhall James Hodgson, Lincoln's Inn Fields
 Reynolds, Henry, Wellington Road, Stafford James Read, sen., Mildenhall
 Radcliffe, Reginald, Liverpool Edward Bower, Birmingham
 Rowlands, John, Chester ; and Alfred Place George James Duncan, Liverpool
 Roose, Francis, 33, Upper Montague Street, Montague Square John Finchett Maddock, Chester
 Slater, William, Eagle Cottage, Greenheys, Manchester ; Chorlton-upon-Medlock John Ilderton Burn, South Square
 Smith, James, 37, Wharton Street, Lloyd Square James Saunders, Chorlton-upon-Medlock
 Shafto, George Dalston, 13, Clifford's Inn Thomas Grueber, Billiter Street
 Shafto, John Cuthbert, 13, Clifford's Inn John Burrell, Durham
 Sandford, William Mathews, Gloucester John Pexall Kidson, Sunderland
 John Kidson, Sunderland
 Joseph Sandford, Winchcomb
 G. J. S. Tomkins, Cheltenham
 Edward Washbourn, Gloucester
 Selby, Francis Thomas, Spalding Ashley Maples, Spalding
 William Edwards, Spalding
 Salmon, John, 28, Tavistock Place, Tavistock Square ; Newcastle-upon-Tyne Thomas Carr, Newcastle-upon-Tyne
 Shaen, William, 50, Chancery Lane Mark Lambert Jobling, Newcastle-upon-Tyne
 Sheppard, Francis, 9, Gordon Terrace, Holland Road, Brixton William Henry Ashurst, Cheapside
 Smith, Robert, Warwick Alfred Goddard, King Street, Cheapside
 Stretton, George, 2, Great Russell Street ; Nottingham ; Everett Street Samuel William Haynes, Warwick
 George Freeth, Nottingham
 George Rawson, Nottingham
 Spencer, Edward George, Reygill, Carlton, York ; Lambeth George Spencer, Keighley
 Smith, Charles Joseph ; 5, Willow Terrace, Islington ; Guildford Joseph Hockley, Guildford
 Turner, Llewelyn, 21 and 11, New Ormond Street, Queen Square ; Carnarvon Richard Anthony Poole, Carnarvon
 Taylor, Robert Wager, 6, New Square, Lincoln's Inn ; Albion Terrace John Sandell, Bread Street
 William Strickland, New Square
 Turner, Alfred, 3, Sydney Square, Commercial Road, Bow William Henry Turner, 8, Mount Place, Whitechapel Road
 Tarleton, Francis Willington, 9, Phoenix St., Clarendon Square ; Clarendon Square John Willington Tarleton, Wednesbury
 R. H. Tarleton, Birmingham
 F. W. Wilson, Sheffield
 Tennant, Edmund, 8, Arthur Street, Gray's Inn Road ; Peterborough John Gates, Peterborough
 Thurgood, George Frederick, Saffron Walden William Thurgood, Saffron Walden
 W. W. Oldershaw, Tokenhouse Yard
 Vaughan, James Henry, Hereford ; Kennington Lane Jonathan Elliott Gough, Hereford
 Underwood, Hugh Frederick, 8, Essex Street, Strand ; Hereford Richard Underwood, Hereford
 Wetherfield, George Manley, 5, Union Place, City Road John Thrupp, Winchester Buildings
 Whitfield, James Benning, Old Bond Street Joseph William Allan, Frederick's Place, Old Jewry
 Wilkinson, William, 2, Upper Charles Street, Northampton Square ; Morpeth George Brumell, Morpeth
 Winfred, William, 6, Elysium Row, Fulham ; Hart Street Charles Addis, Great Queen Street
 Wright, William, Settle John Fearenside, Burton-in-Kendal
 John Cowburn, Settle
 Wright, Thomas, 26, Alfred Street, Bedford Square ; Newcastle-upon-Lyne Armorer Donkin, Newcastle-upon-Tyne
 Welstead, Frederick, 15, Cadogan Terrace, Chelsea Julius Gaborian Shepherd, Faversham

To be Admitted in Easter Term, 1847, Pursuant to Judges' Orders.

Hamilton, Thomas William, 86, Great Tower

Street

Moss, John Thomas, 2, Dyer's Buildings

Tudor, James, Kidderminster

Keith Barnes, Spring Gardens

H. W. Rosser, Dyer's Buildings

William Boycott, Kidderminster

JUDGES OF THE NEW COUNTY COURTS.

<i>Districts.</i>	<i>Judges.</i>
1. Northumberland	Geo. Hutton Wilkinson.
2. Durham	Hen. D. Stapylton.
3. Cumberland and Westmoreland	J. H. Ingham.
4. North Lancashire	Thos. Batty Addison.
5. South-West Lancashire	William A. Hulston.
6. Liverpool	William Lowndes.
7. West Cheshire	J. W. Harden.
Manchester	Robert Brandt.
9. East Cheshire	J. St. John Yates.
10. South-East Lancashire	Thomas Greene.
11. Bradford	C. H. Elsley.
12. Halifax	G. Stansfield.
13. Sheffield	W. Walker.
14. Leeds	T. H. Marshall.
15. York	R. Wharton.
16. Hull	William Raines.
17. Lincolnshire	J. G. Stapleton Smith.
18. Nottinghamshire	R. Wildman.
19. Derbyshire	J. T. Cantrell.
20. Leicestershire and Rutlandshire	J. Hildyard.
21. Birmingham	Leigh Trafford.
22. Warwickshire	F. Trotter.
23. Worcestershire	B. Parham.
24. Herefordshire and Monmouthshire	J. M. Herbert.
25. Dudley and Wolverhampton	N. R. Clarke, S.L.
26. Staffordshire	R. G. Temple.
27. Shropshire	Uvedale Corbet.
28. North Wales	A. J. Jones.
29. Mid Wales	E. L. Richards.
30. South-East Wales	John Wilson.
31. South-West Wales	John Jones.
32. Norfolk	T. J. Birch.
33. Suffolk	F. K. Eagle.
34. The Fen Circuit	J. D. Burnaby.
35. Bedfordshire and Cambridgeshire	John Collyer.
36. Buckinghamshire and Northamptonshire	J. W. Wing.
37. Berkshire and Oxfordshire	J. B. Parry, Q.C.
38. Home Circuit	J. H. Koe, Q.C.
39. Essex	W. Gurdon.
40. Whitechapel	Jas. Manning, S.L.
41. Shoreditch and Bow	Henry Storks, S.L.
42. Clerkenwell	Thos. Starkie, Q.C.
43. Bloomsbury	D. D. Heath.
44. Brentford, Brompton, & Marylebone	Andrew Amos.

45. Westminster	D. C. Moylan.
46. Surrey	J. F. Fraser.
47. Southwark	George Clive.
48. Greenwich and Lambeth	D. Leahy.
49. West Kent	James Espinasse.
50. East Kent	C. Harwood.
51. Sussex	— Turner.
52. Hampshire and Isle of Wight	C. J. Gale.
53. Bath and North Wilts	J. G. Smith.
54. Gloucestershire	James Francillon.
55. Bristol	Arthur Palmer.
56. South Wilts and Dorsetshire	Edward Everett.
57. Somersetshire	John Monson Carrow.
58. East Devon	John Tyrrell.
59. West Devon	W. M. Praed.
60. Cornwall	G. G. Kekewich.

We have collated the several lists which have appeared in the public press with the list of the bar, and have made several corrections from our own means of information, but apprehend that all the names are not yet quite accurately stated. Several absurd mistakes have been made in the lists hitherto published.

ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

Courts of Common Law.

FOUNDATIONS OF ACTION AND PRINCIPLES OF THE COMMON LAW.

MONEY PAID.

An auctioneer, who paid the duties on a sale of lands by auction, (where the lands were bought in at the sale, and the Commissioners of Excise refused to remit the duties) was *held* entitled to recover back the amount from his employer, in action for money paid. That action is maintainable in every case in which the plaintiff has paid money to a third party at the request, express or implied, of the defendant, with an undertaking, express, or implied, to repay it; and it is not necessary that the defendant should have been relieved from a liability by the payment. *Brittain v. Lloyd*, 14 M. & W. 762.

Cases cited in the judgment: *Spencer v. Parry*, 3 East, 337; *Grissell v. Robinson*, 3 Bing. N. C. 10; 3 Scott, 339; *Brown v. Hodgson*, 4 Taunt. 189.

PARTNERSHIP.

A. sold to B. by deed, his interest in the profession and practice of a surgeon and apothecary, carried on by him in Park Street, Camden Town, for 900*l.*, 500*l.* to be paid on the execution of the deed, and 400*l.* at the expira-

tion of a year. *A.* covenanted not to exercise the profession within three miles of his then place of business; and also, that during the space of one year from the date of the deed, he should continue to reside in Park Street aforesaid, and to carry on and attend to the said profession and practice as he had hitherto done; and that he would to the utmost of his power, introduce *B.* to his patients, and do every reasonable act for promoting the interest of the concern. And *B.* covenanted, in consideration thereof, to allow *A.*, during the year, a moiety of the clear profits of the concern, to be paid at the expiration thereof: *Held*, that the parties were not hereby constituted partners in the trade during the first year, and, therefore, that *B.* might sue *A.* for monies received by him from their patients during that year. *Rawlinson v. Clarke*, 15 M. & W. 292.

PATENT.

Construction of specification.—The words of a specification are to be construed according to their ordinary and proper meaning, unless there be something in the context, (which may be explained by evidence) to show that a different construction ought to be made.

In covenant or on indenture whereby the defendants were licensed to make and sell buttons according to the plaintiff's patent, the issue was whether certain buttons made by the defendants, were made under the license. The specification described the invention to consist in the application to the covering of buttons, of rich figured woven fabrics "wherein the ground or the face of the ground thereof, is produced by a warp of *soft or organzine silk*, such as is used in weaving satin, and the classes of fabrics produced therefrom." At the trial, the jury asked the judge how they were to interpret the word "or" in the specification, whether it was disjunctive, or, whether "*organzine*," was the construction of the word "*soft*." The judge told them, that, in his opinion, unless the silk were *organzine*, it was not within the patent: *Held*, upon a bill of exceptions, that this direction was erroneous; for, that the judge should not have told the jury, absolutely, that soft and organzine silk were the same, but that the words were capable of being so construed, if the jury were satisfied that, at the date of the patent, there was only one description of soft silk, and that organzine, used in satin weaving; but, otherwise, that the proper and ordinary sense of the word was to be adopted, and the patent held to apply to every species of soft silk, as well as organzine silk. *Elliott v. Turner*, 2 C. B. 446.

POWER.

Execution of.—By a deed of settlement preparatory to the marriage of *A.* and *B.*, lands were conveyed to *C.* and his heirs, to the use of *B.* and her heirs, until the marriage should be solemnized; and from and immediately after the solemnization thereof, to the use of such person or persons, for such estate or estates, and upon such trusts, &c., as *B.*, notwithstanding coverture, and whether covert or

sole, and without consent, &c., should, by any deed or writing under seal, or by her last will, or any writing, in the nature of, or purporting to be, her last will, or any codicil thereto, limit, direct, or appoint, &c.; and, in default of and until appointment, to the use of *C.*, during the joint lives of *A.* and *B.*; and, after the decease of either of them, to the use of *B.*, her heirs and assigns, for ever. After the execution of the settlement, and before the marriage, *B.*, by a codicil to a will made by her some months previously, in terms referring to the power contained in the settlement, devised the lands in trust for the children of the marriage, and in default or failure of children, in trust for *A.*, for life: *Held*, that this was a good execution of the power, though made before the marriage, and notwithstanding that the event upon which it was to take effect, viz. the marriage of *A.* and *B.*, was contingent. *Logan v. Bell*, 1 C. B. 872.

Cases cited in the judgment: Sir Edward Clere's case, 6 Co. Rep. 17, b.; Maundrell v. Maundrell, 10 Ves. 246; Dalby v. Pullen, 2 Bing. 144; 9 J. B. Moore, 300; Sclater v. Travell, Viner's Abr. title "Authority," p. 427, pl. 8; Doe d. Hodsden v. Staple, 2 T. R. 684; Hodsden v. Lloyd, 2 Bro. C. C. 534.

PRINCIPAL.

See *Agent*.

PRIVILEGED COMMUNICATION.

See *Libel*; *Slander*.

RAILWAY SHARES.

Order for purchase of shares, how satisfied.—

The defendant gave the plaintiff, a broker on the Stock Exchange, an order to purchase for him 50 shares in a foreign railway company. At that time no shares of the company were in the market, the foreign government not having yet authorised its establishment; but letters of allotment for shares were then, according to the evidence of persons on the Stock Exchange, commonly bought and sold in the market as shares. The plaintiff bought for the defendant a letter of allotment for 50 shares: *Held*, that a jury might well find that this was a good execution of the order. *Mitchell v. Newhall*, 15 M. & W. 308.

And see *Contract*.

RENT.

See *Distress*.

SHERIFF.

Adverse claim.—*Execution.*—*Directions to withdraw.*—The sheriff having seized certain goods in the house of *A.*, under a *fi. fa.* against him at the suit of *B.*, and a claim having been made by *C.* under a bill of sale, *B.* not choosing to contest the claim so made by *C.*, his attorneys gave the sheriff a direction to withdraw in the following terms:—"A. v. B. Withdraw under the *fi. fa.* herein, the goods having been claimed." The officer finding that the bill of sale under which *C.*'s claim was made did not convey the whole of the goods he had seized, retained possession of those to which the claim

did not apply; and three days afterwards informed the attorneys for the execution-creditor what he had done. The attorneys, as well as the execution-creditor, expressed their approbation of the course the officer had adopted, the former observing that the direction to withdraw was only intended to apply to the goods that were the subject of the claim.

In trespass for entering the house and seizing and converting the goods, the sheriff justified entering under the writ. The plaintiff replied, admitting the writ and warrant, that after the seizure, *A.* discharged and forbade the defendants from further executing the writ, and now assigned that he brought his action for the subsequent trespass and conversion. The defendants, in their rejoinder, traversed the discharge to the sheriff: *Held*: that, construing the direction to the sheriff to withdraw, with reference to the surrounding circumstances, it amounted to no more than a partial direction to retire from the possession of the goods to which *C.*'s claim applied: *Held* also, that the subsequent ratification by *A.* of the detention of the rest of the goods, being an act done for his benefit, was a sufficient justification to the sheriff.

Held also, that the issue was not divisible, and therefore it would not be entitled to recover, even though it should appear that some of the goods subsequently detained, were within the claim. *Walker v. Hunter*, 2 C. B. 324.

Case cited in the judgment: *Wilson v. Tuman*, 6 M. & G. 230; 6 Scott, N. R. 894.

SLANDER.

Privileged communication.—Quere, whether a caution *bonâ fide* given to a tradesman, without any inquiry on his part, not to trust another, falls within the exception as to privileged communications.

Held, by *Tindal, C. J.*, and *Erle, J.*, that it does.

Held, by *Coltman* and *Cresswell, J. J.*, that it does not. *Bennett v. Deacon*, 2 C. B. 628.

TROVER.

1. *When maintainable*.—*A.* being indebted to *B.* by a bill of sale, which was found to have been *bonâ fide* executed, conveyed to him all his stock in trade, household furniture, &c., absolutely. The bill of sale (which was under seal) contained a covenant by *A.* to pay the debt *on demand*, and a proviso for redemption on payment of the debt and interest *on demand*, and a further proviso that the assignor should continue in possession until default. The goods having been subsequently, and before any demand made by *B.*, seized by the sheriff under a *f. fa.* upon a judgment entered up against *A.* on a warrant of attorney: *Held*, that *B.* had not such right of immediate possession as to entitle him to maintain trover against the sheriff. *Bradley v. Copley*, 1 C. B. 685.

Cases cited in the judgment: *Gordon v. Harper*, 7 T. R. 9; *Cooper v. Willomatt*, 1 C. B. 672.

2. *Landlord*.—*Goods distrained*.—The plaintiff lent a pianoforte to *W.*, in whose hands it

was seized under a distress for rent. While the landlord's bailiff remained in possession by *W.*'s consent, a *f. fa.* against *W.*, at the suit of another creditor, was put into the premises, and the officer seized the pianoforte, and removed it to the premises of the defendant, an auctioneer, for sale: *Held*, that the plaintiff (after demand and refusal to deliver it) was entitled to recover it from the defendant in trover. *Turner v. Ford*, 15 M. & W. 212.

3. *What is a conversion*. It is not every wrongful act depriving a party of the possession of his goods that amounts to a conversion. Where plaintiff's goods and servants were on land which defendant recovered in ejectment, and defendant on entering under the writ of possession, turned plaintiff's servants off the land, and would not let them remain for the purpose of removing the goods, there having been no subsequent demand or refusal: *Held*, that the jury might find that there was no conversion. *Thorogood v. Robinson*, 6 Q. B. 769.

Case cited in the judgment: *Needham v. Rawbone*, 6 Q. B. 771, n.

TOLLS.

Manure.—A canal act empowered the company of proprietors to take for tonnage upon all coals, stones, timber, corn, &c., and other goods, wares, and commodities, whatsoever, which should be navigated or conveyed upon the canal, such rates and duties as they shall think fit, not exceeding the sum of 2½d. for every ton, on entering into or passing out of the canal at its junction with the river Trent; and also, not exceeding the sum of 1½d. per mile for every ton of coal, stone, timber, corn, &c., and other goods, wares, and commodities, except all dung, soil, marl, ashes, and other manure, (other than lime, which should pay half the said tolls,) and except gravel, stone, or other materials for mending the roads, which should pass toll free, which should be navigated or conveyed upon the canal. A subsequent section provided, that no boat or vessel should pass through any lock to be made under the act, without the consent of the company of proprietors, unless such boat or vessel should pay a duty or rate equal to what would be paid by a vessel loaded with a burthen of 30 tons, unless waste water should be running over the regulating weir of such lock, or unless such vessel should be returning after having passed on the canal with a greater burthen than 30 tons: *Held*, that a boat laden with a burthen of manure, though greater than 30 tons, was entitled to navigate the canal, and to pass at any time through the locks, without payment of any tolls whatever. *Grantham Canal Company v. Hall*, 14 M. & W. 880.

WATER-COURSE.

In case for the division of water, the plaintiff alleged in his declaration a reversionary interest in three closes of land, to wit, three ponds filled with water, one pond being upon each of the said closes, and a right to the flow of the water into the said closes, for supplying the said ponds in the said closes with water.

for the watering of cattle. The defendant traversed the right to the flow of the water as alleged. It appeared in evidence at the trial, that the plaintiff had enjoyed an immemorial right to the flow of this water into an ancient pond in one of his closes, but that, above thirty years ago, he made a new pond in each of the three closes, and turned the water so as to supply them, and thenceforth disused the old pond, which was gradually filled with rubbish and overgrown with grass. The plaintiff's right in respect of the three ponds having been defeated by proof of an outstanding life estate, under 2 & 3 W. 4, c. 71, s. 7: *Held*, that he was entitled, under this declaration, to recover in respect of his right to the flow of water to the old pond. *Hale v. Oldroyd*, 14 M. & W. 789.

WIFE.

See *Baron and Feme*.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL

Lord Chancellor.

Rodgers v. Nowill. Jan. 28th, 1847.

ADMISSIONS IN AID OF AN ACTION.

This court will not on motion direct certain facts to be admitted by a defendant for the purpose of facilitating the trial at law of a question between him and the plaintiff when the court below has refused to order such admissions.

Mr. *Malins* for the plaintiffs stated, that they had filed a bill against the defendants for an injunction to restrain the latter from using the name and trade-mark of the former. The defendants stated in their answer, that they used the name of another firm corresponding with that of the plaintiffs', and resident in the same town. The plaintiffs denied the existence *bond fide* of such other firm; and under the circumstances, Vice-Chancellor *Wigram* had refused the injunction, but retained the bill, with liberty for the plaintiffs to bring an action for the purpose of ascertaining whether or not the firm mentioned by the defendants was fictitious. In order to facilitate the trial of this question, the plaintiffs had moved before his honour that the defendants might be ordered to admit that the plaintiffs were then partners, and carried on such trade, &c.; that they manufactured the articles in the manner alleged in their bill; and that the defendants had used the words and marks of which the plaintiffs complained. The Vice-Chancellor refused to make such order, and dismissed the motion with costs. The plaintiffs now sought from his lordship an order that the defendants should make the above admissions; that so much of the Vice-Chancellor's order as dismissed with costs the application to him might be varied; and that the costs might be costs in the cause.

Mr. *Malins* went very fully into the pleadings for the purpose of showing that the defendants had in their answer actually made the admissions required, and he contended that the court had jurisdiction to control the issue and limit it to the fact in dispute. He referred to *Stevens v. Praed*, 2 Ves. 518, and *Pulling v. Hilton*, 10 Price, 118.

The Lord Chancellor remarked, that he did not see how he who was totally ignorant of the case could order the defendants to make certain admissions when the judge before whom the cause had been heard had refused to make such order.

Mr. *Malins* submitted, that to obviate this difficulty passages in the Vice-Chancellor's judgment had been read, which made it clear that his honour had no doubt on the admissions which are asked.

The Lord Chancellor said, that he could not take in favour of the plaintiffs parts of a judgment or decree against which they appealed. He could not make on motion an order which he should only be justified in making on a rehearing of the whole case.

Mr. *Shee* followed on the same side with Mr. *Malins*, and cited *Marsh v. Sibbald*, 2 Ves. & B. 376.

The Lord Chancellor, without calling upon the defendant's counsel, observed, that the discretion of the court to interfere in the manner in which a trial was to be conducted was of a very delicate description. The present application was to vary the decree of a judge before whom the cause had been heard, who therefore was familiar with its merits, and who had refused to make the order. It was quite clear that his lordship could not adopt such a course as was now required. It was immaterial what might have been the opinion of the Vice-Chancellor, for if his lordship was to decide upon the rights of parties, he must do so upon his own judgment, and there must be a rehearing before himself.

Motion dismissed with costs.

Vice-Chancellor Knight Bruce.

Bull v. Falkner. Feb. 19 & 22, 1847.

PRACTICE.—CONTEMPT.—PRO CONFESSO.

A defendant having appeared, but being in contempt for want of answer, and appearing at the bar pleading her poverty, the court directed a reference on that point. The Master reported that she had not proved her poverty; and, on the application of the plaintiff, the court directed a writ of habeas corpus cum causis to issue for bringing her to the bar, and directed that the proper officer should attend at the return of the writ with the record, in order that the bill might be taken pro confesso. Subsequently an order was made by consent.

THIS was an application on behalf of the plaintiff for a *habeas corpus cum causis*. It appeared that the defendant, M. R. Falkner, spinster, had entered her appearance, but was

in contempt for want of answer. A *habeas corpus* issued, and she was brought to the bar of the court, when she stated that by reason of her poverty she was unable to put in her answer, and having duly sworn to that fact, she was turned over from the custody of the sheriff of Middlesex to the Queen's Prison, and the court thereupon directed a reference to the Master to inquire and certify as to her alleged poverty. The solicitors for the plaintiff and defendant attended the Master, and the latter was ordered to bring in a state of facts within a week, but he failed to do so, and a warrant was then taken out for him to show cause why the Master should not report default. No state of facts was taken in, nor cause shown, and the Master at the end of three months certified that the defendant was in default. On this certificate the motion was made for the *habeas corpus cum causis* to bring the defendant to the bar to answer her contempt, and for an order that the proper officer should attend at the return of the writ with the record in order that the bill might be taken *pro confesso*.

C. M. Roupell, for the motion, cited *Venables v. Bradon*, not reported, before the Vice-Chancellor of England.

Mr. Berry, Clerk of Records and Writs, stated that the course proposed was regular.

His Honour made the order without notice being served on the defendant.

Feb. 27. The defendant was brought up, and an order was made, with the consent of the plaintiff, that a traversing note should be forthwith filed by the plaintiff, and that the defendant should be at liberty to put in an answer within a limited time, and that the defendant should be discharged, the costs of the contempt to be costs in the cause.

Queen's Bench.

(Before the Four Judges.)

Williams, assignee, v. Chambers.

INSOLVENT. — PERSONAL SERVICE AFTER VESTING ORDER.

An assignee of an insolvent cannot maintain an action for money due for the personal services of the insolvent performed by him after the date of the vesting order.

The 37th section of the 1 & 2 Vict. c. 110, does not pass to the insolvent's assignees the right to the profits of such services.

THIS was an action of assumpsit by the plaintiff, as assignee of the estate and effects of one Brown. The declaration stated, that after the effects of the insolvent had become vested in the plaintiff as assignee, and before the final discharge of the insolvent, the defendant was indebted to the plaintiff for work and labour performed by the insolvent. Plea, that the work was done after the vesting order was made, and was for the value of the personal services of the insolvent which were not more than were requisite for the necessary livelihood and support of the insolvent and his family;

and that before the plaintiff as such assignee interfered and claimed the amount, that the defendant paid the monies to the insolvent. Replication, that the defendant did not, before the plaintiff as such assignee interfered or had made any claim or demand upon the defendant, pay to the insolvent all or any of the said monies as in the said plea alleged. To this replication there was a demurrer, on the ground that it tendered an immaterial issue. The question raised for the opinion of the court was, whether under the 1 & 2 Vict. c. 110, s. 37, (which vests in the provisional assignee all the real and personal estate and effects of the insolvent, except the wearing apparel, bedding, and other such necessities of such person and his family, and the working tools and implements of such prisoner not exceeding in the whole the value of 20*l.*), the assignee can recover for the value of the personal services of the insolvent, alleged to be requisite for the necessary livelihood of himself and family, performed after the vesting order and before his final discharge.

Mr. Cowling, in support of the demurrer. This was a claim which did not pass to the assignee of the insolvent. The right of the assignee only extends to property of the insolvent, and not to the value of his personal services, which are analogous to damages recovered in an action for slander or for personal injuries. The assignees cannot let out the personal services of the insolvent to hire. The rights of assignees, under the 1 & 2 Vict. c. 110, after the vesting order, are not greater than those of assignees after a fiat in bankruptcy; and it has been held, under the bankrupt laws, that a bankrupt before certificate is entitled to the profits arising from his personal services, and that his assignee cannot let out his personal services to hire. *Chippendale v. Tomlinson*; *Silk v. Osborn*; *Ex parte Walters*; *Hope v. Stephenson*; *Coles v. Barrow*; are to a similar effect. In *Kitchen v. Bartsch*,^a the assignees had interfered, and required the payment to be made to them; and in *Herbert v. Sayer*^b it was held, under the Bankrupt Act, 6 Geo. 4, c. 16, s. 63, that an uncertificated bankrupt might sue, and that a plea setting up the bankruptcy should show that the assignees had interfered.

Mr. Ball, contra. In *Ford v. Dabbs* no judgment was given on this point, but it appears to have been thrown out by the court that a debt accruing to an insolvent between the vesting order and the final discharge vests in the assignees, under 1 & 2 Vict. c. 110, s. 37. In *Drake v. Beckham*, 8 M. & W. 845, it was held by a court of error, that an action for a breach of agreement passed to the assignees. [*Coleridge, J.* The plaintiff can only recover on the supposition of a contract. Suppose a chattel was given to the insolvent instead of money, could that be

^a 4 Doug. 318, and Cooke's Bankrupt Law, 106.

^b 1 Esp. 140. • Mont Deacon & De Gex, 635.

^c 3 Bos. & Puller, 578. • 4 Taunt. 754.

^d 7 East. 53. • 5 Q. B. 965.

claimed by the assignees?] The effect of the 37th section is to vest the property of the insolvent absolutely in the assignees.

Mr. Cowling was heard in reply. *Drake v. Beckham* has been taken on writ of error to the House of Lords.

Cur. adv. vult.

Lord Denman, C. J., said, this was an action of assumpsit brought by the assignees of an insolvent to recover the amount due for some work executed by the insolvent debtor after the making of the vesting order. The defendant pleaded, that the work was the personal work and labour of the insolvent; that the money had for the same was not more than was sufficient for the support of the insolvent; and that before the plaintiff interfered to demand payment for the same the defendant had paid the insolvent. The question turned on the construction of the 1 & 2 Vict. c. 110, s. 37, by which it is enacted, that, except the "wearing apparel, bedding, and other such necessities of the insolvent and his family, and his working tools and implements;" all "debts due or growing due to such prisoner, or to be due to him before such discharge as aforesaid," should be vested in the assignee. The plaintiff's claim was founded on the comprehensive words of the section which entitled the assignee to recover any debt due to the insolvent "before his discharge." It was contended on the part of the defendant that, though the assignee might have the benefit of any contract made by the insolvent when the money arising from such contract came into the hands of the insolvent, yet that they could not let out the insolvent for hire, or make a contract for his personal labour; and the case of *Chippendale v. Tomlinson*,^b before Lord Mansfield, was cited in support of that proposition, and to show that the debt claimed here could not vest in the assignee, as it was a debt arising from the personal labour of the insolvent. The court adopted this reasoning, and thought that the assignee could not be entitled to recover, unless the court was prepared, which it was not, to say, as Lord Mansfield had described it, that an assignee might let an insolvent out to hire and contract for his personal labour. The judgment of the court would therefore be for the defendant upon this demurrer.

Judgment for the defendant.¹

Exchequer.

Doe dem. Mostyn v. Eyton. Hilary Term, Feb. 1st, 1847.

EJECTMENT.—PARTICULARS.

In an action of ejectment for alleged breaches of covenants contained in a lease, the defendant is entitled to particulars of the breaches of covenant on which the plaintiff relies.

^b 4 Doug. 318.

¹ See also *Rogers v. Spence*, 12 Clark & Finn. 700, as to what will pass to the assignees under the Bankrupt Act, 6 Geo. 4, c. 16.

THIS was an action of ejectment to recover possession of certain coal mines by reason of alleged breaches of covenants contained in the lease. The defendant took out a summons for particulars of the breaches of covenant, and of the premises sought to be recovered, which summons was heard by Rolfe, B., who refused to make an order. A similar application was made to the court upon affidavit that the defendant was wholly ignorant of the nature of the covenants, provisoes, and stipulations in respect of which the action of ejectment was brought.

The Attorney-General showed cause upon affidavit that the defendant was fully aware of the covenants by which he was bound.

Welsly in support of the rule.

Per Curiam. The defendant wishes to know the particular breaches of covenant on which the plaintiff relies. That the defendant is entitled to, or he would be obliged to come prepared to prove at the trial that he has performed every covenant in the lease. The particulars should give the same information as the breaches assigned in a declaration in covenant.

Rule absolute.

Court of Review.

Ex parte Lowtell, in re Dutchman. March 3, 1847.

PRACTICE.—COSTS.—ANNULLING FIAT.

A fiat was issued at the bankrupt's instance, and on a petition by a creditor, assented to by the bankrupt and the assignees, the same was annulled, with costs to be paid out of the estate, the petitioner undertaking to issue a new fiat immediately.

THE petition was in this case presented by a creditor, to annul a fiat which had been issued by the bankrupt against himself. The petition also prayed, that the costs might be paid out of the estate as soon as a new fiat had been issued and assignees chosen thereunder, the petitioner undertaking to issue such new fiat immediately.

Bacon, for the petition.

Freeling, for the bankrupt and the assignees, consented.

Order made accordingly.

COMMON LAW SITTINGS.

Queen's Bench.

In and after Easter Term, 1847.

MIDDLESEX.

In Term.

1st Sitting—Friday April 16
And two following days at Eleven o'clock.

2nd Sitting, Tuesday April 20
And subsequent days at Eleven o'clock.

3rd Sitting, Thursday May 6
At ½ past Nine o'clock precisely, for Undeferred Causes only.

A list of such remanets as appear fit to be tried in Term will be printed immediately, but on the

statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, provided the other side have two days' notice of the application at the Marshal's to postpone, and do not oppose the application on good grounds—the usual number of completed and new causes will be put into the list day by day in their usual order.

Sitting after Term, Monday . . . May 10

LONDON.

In Term.

Sitting at 10 o'clock on Friday . . . May 7

For Undefended Causes and such as the Judge considers fit to be taken.

After Term.

(To adjourn.)

Common Pleas.

In Term.

MIDDLESEX.

LONDON.

Wednesday . April 21 | Friday . . April 23
Wednesday . . . 28 | Friday . . . 30

After Term.

MIDDLESEX.

LONDON.

Monday . . . May 10 | Tuesday . May 11

N. B. The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Tuesday the 11th May, in London, no causes will be tried, but the court will adjourn to a future day.

Exchequer of Pleas.

MIDDLESEX.

In Term.

1st Sitting, Friday . . . April 16
2nd Sitting, Friday 23
3rd Sitting, Monday May

IN LONDON.

1st Sitting, Thursday . . . April 22
2nd Sitting, Friday 30

After Term.

IN MIDDLESEX.

IN LONDON.

Monday . . . May 10 | Tuesday . . May 11
(To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

Royal Assent. March 30, 1847.

Drainage of Lands.

House of Lords.

NEW BILLS IN PROGRESS.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy, Abolishing Court of Review,

and Reducing Number of Commissioners. (No. 2.) In Committee. Lord Brougham.

Markets and Fairs Clauses.—Public Undertakings Clauses.—Gas Works Clauses.—Waterworks Clauses.—Passed.

Indemnity. For 2nd reading.

Commons Inclosure, No 2. For 2nd reading.

The House has adjourned to the 15th April, when their lordships will assemble in the new building, her Majesty having assigned that portion of her palace for the use of their lordships.

House of Commons.

NEW BILLS IN PROGRESS.

City Small Debts Court. In Committee. Mr. Masterman.

Law of Railways. For 2nd reading. Mr. Strutt.

Agricultural Tenant-right. In Committee. Mr. Strutt.

Roman Catholics Relief. In Committee. Mr. Watson.

Pious and Charitable Property. For 2nd reading. Lord J. Mannors.

Rating Small Tenements. For 2nd reading. Mr. Waddington.

For the Speedy Trial and Punishment of Juvenile Offenders. For 2nd reading. Sir John Pakington.

To Encourage Life Insurance. For 2nd reading. Mr. Godson.

Lunatic Asylums Regulation. Attorney-General.

Inclosure Act Amendment. Sir F. Thesiger. Health of Towns. For 2nd reading. Lord Morpeth.

Towns Improvement Clauses. For 2nd reading.

This House has adjourned to the 12th April.

THE EDITOR'S LETTER BOX.

RULES OF THE NEW COUNTY COURTS.

Our correspondent "R. J. A." is undoubtedly correct in assuming, that a plaintiff who has obtained an unsatisfied judgment against a defendant, may issue a summons in the form prescribed, which, upon being personally served, subjects the defendant to examination and commitment for forty days, at the discretion of the judge. Our observations, (*ante*, p. 459,) were confined to the effect of the original summons, and the distinction in the subsequent practice, if that summons happens to be left at the defendant's residence or place of business, instead of being served personally. Where the original summons has not been served personally, and the defendant does not appear at the hearing, the judge has no power to commit, unless a second summons is taken out after judgment, and to enable the judge to commit upon this second summons it must be served personally. We apprehend this to be the clear construction of sections 98 & 101.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 10, 1847.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

THE JUDGES OF THE NEW COUNTY COURTS.

WE are not aware that there has been, and presume it is not now intended that there shall be, any official notification in the Gazette, or otherwise, of the appointments under the County Courts Act. It may not be necessary in a strict legal point of view, but we must be allowed to think it would have been more respectful to the new judges, and more satisfactory to the public, if the nomination of those functionaries, and indeed, even the appointment of their subordinate officers, had been authoritatively announced before the new courts were opened for the dispatch of business. It is quite true, the names of the fortunate candidates have been oozing out gradually during the last three months. A list, professing to contain nearly all the appointments, but which was in many respects inaccurate, appeared in the daily newspapers a fortnight since, and in our number of Saturday last, we presented our readers with a list, as correct as the materials within our reach enabled us to render it.

As may be expected, some of the appointments have been the subject of severe criticism. That they should not have produced universal satisfaction in one branch of the profession is not, perhaps, to be wondered at, and may be admitted without impugning the judgment exercised in the selection. For one successful candidate there were at least ten, and some accounts have it thirty, rejected applications, and it is expecting too much of those whose pretensions were overlooked, that they should ap-

plaud the sagacity that failed to discern their peculiar merits. The selection is understood to be unpopular amongst the members of the bar on another ground. The new judges have, for the most part, been taken from that somewhat too numerous class who are not inconvenienced by the multitude of clients, and their absence from Westminster Hall, whatever may be the length of time occupied by judicial engagements, will add little or nothing to the business or emoluments of those who remain. It has also been said, that the published list furnishes more than a single example of a member of the bar who was understood several years since to have retired from the legal *strepitus*, and relinquished the struggle for professional advancement, but who has been dug up and induced to abandon the enjoyment of learned leisure, and the ease which the possession of a sufficient fortune secures, for the purpose of undertaking the onerous duties, and, of course, receiving the moderate stipend, which must devolve on a judge of the County Court. We have heard other strictures on individual appointments, of a nature so personal that we refrain from giving them extended circulation; but we must observe, that if the facts upon which those disparaging rumours rest are not wholly devoid of foundation, it would have been much better, if those to whom they refer had not been placed in a position in which some degree of private deference and respect have usually been considered essential to the satisfactory discharge of public functions.

Having enumerated all the objections urged against the recent appointments, it is, perhaps, unnecessary to add, that they are not, in our opinion equally entitled to considera-

tion. Those complaints which are dictated by spleen or disappointment we discard as entitled to no weight, but it is matter of regret, that so large a proportion of the published list **should consist of names heretofore unknown to the profession and the public.** It would undoubtedly have been impossible to persuade those who have leading business at the bar, or even juniors with very encouraging prospects, to renounce all chance of the prizes the higher branch of the law offers, and content themselves with the status and limited income which a judgeship of the County Court affords. Still, it is notorious that the requisite number of barristers, or thrice the number, might have been selected of approved competence and sufficient practical experience, who would gladly have exchanged the uncertainty of a struggle with countless competitors for the security and respectability of a judicial situation accompanied by a moderate provision. We apprehend that the Lord Chancellor felt himself fettered in his choice, by a laudable determination generally to recognise the claims of those who held local judgeships before the passing of the act, for we observe, that in the metropolitan districts, in which local courts were not previously established, the present appointments are altogether unexceptionable, and have, in many instances, been conferred on those who have acquired considerable eminence in the profession. As regards the country appointments the case is different. They have, for the most part, been conferred on members of the bar, who, though perhaps well known in certain localities, and deservedly estimated in their own circles, have not had sufficient practice to render their names familiar to one out of every hundred persons connected with the legal profession, and are utterly unknown to the public at large. We have taken pains diligently to examine the printed reports of cases decided in all the courts during the last year, and can find only three instances in which any of the number of stuff gowns-men now appointed judges, appear to have been engaged in cases involving any question of law considered of sufficient importance to be reported. We admit this is not a decisive test. Varied are the influences exercised, with more or less success, to obtain business, and the prominent position which business alone can give to a barrister. It does not follow as matter of certainty therefore, that a large practice is accompanied by peculiar capabilities. It

is quite possible that some barristers occupy a higher place than they deserve, and many of acknowledged ability have never had an opportunity afforded them for the display of practical talent. Nevertheless, it seems to be universally admitted, as a general rule, that those have practice at the bar whose qualifications entitle them to this distinction, and that business is usually an evidence of, as well as a security for, professional competency. It need not be wondered at, therefore, if the public should repose confidence in those who have been frequently trusted and tried by litigant parties, rather than in those who are without practical experience or professional reputation; and it is difficult to conceive an occasion in which it would be more desirable to secure the public confidence, than where judges are appointed with novel and unusual powers, and their decisions in all cases are made conclusive, and left without appeal. It is impossible not to perceive that the appointment of so many men, without name or note in the profession, creates an additional difficulty in carrying the act successfully into execution, even though it should ultimately turn out that the new judges "falsify men's hopes," and one and all prove eminently qualified for the discharge of judicial functions.

We were amongst those who, when the County Courts Act was under legislative consideration, failed to discern the fairness or force of the arguments used as a pretence for limiting the exercise of the Lord Chancellor's patronage by enacting, that attorneys and solicitors, however well qualified, should not be eligible to fill the office of judges of the new courts when future vacancies occurred. The discretion of the Lord Chancellor in this respect, our readers will recollect, was restricted to the re-appointment of attorneys who held office as judges, assessors, or clerks of the County Courts or Courts of Request, at the passing of the act.^a The published list of appointments has not convinced us that the restriction was judicious or beneficial to the public. If both branches of the profession had been open to the Lord Chancellor, it is quite possible he might have selected many attorneys, at least as well acquainted with the general principles of law and the rules of practice, as some of the barristers chosen to preside in the new courts. Let us add, that in consider-

^a See Analysis of the Act, vol. 32, p. 497.

ing the pretensions of those attorneys who deemed it expedient to become candidates for the office of judges, the Lord Chancellor might safely, and with the general approval of that branch of the profession, have rejected the claims of any one whose imprudent management of his own affairs had obliged him to incur the humiliation of repeated applications to the Insolvent Court for protection; or of any, whose professional transactions were of such a nature as to render him, in the recorded judgment of his brethren, unfit to associate with them.

LAW RELATING TO RAILWAY COMPANIES.

THE courts of equity are doing all that in them lies, to correct the evils and prevent the mischievous consequences arising from the carelessness and disregard of private interests manifested by the legislature, in respect of the powers conferred on railway companies. The principle has been broadly laid down, and consistently acted upon in several recent instances, that a railway company is bound to act in every case within the powers derived from the statute under which it is incorporated, and that the courts will interfere to restrain the company from exceeding its powers, whether the interest affected by the proposed proceeding is of great or trivial value. Considering the novelty and extent of these undertakings, it is, of course, impossible that the courts can yet understand or foresee all the consequences that may arise from the various transactions in which railway companies may hereafter be tempted to engage, but it affords great security to the public, as well as to those who have invested their property in this description of speculation, that those on whom the management of such gigantic concerns has devolved, should be authoritatively informed at the outset, that extensive and formidable as is their power, it has limits, and that they may be promptly and effectually restrained, if they venture upon any deviation from the course of proceeding sanctioned by the legislature.

The powers conferred on railway companies, to enter upon and take possession of the lands of others for their own purposes, is one the exercise of which requires to be jealously watched, and several occasions have arisen, since the commencement of the present year, in which the courts of

equity have interfered to prevent injury and inconvenience to individuals by the irregular exercise of this power. Thus, in the case of *Hollins v. The North Staffordshire Railway Company*, where the company was proceeding, under the Jury Clauses, to assess the value of the plaintiff's land, with a view to obtaining the immediate possession for the purposes of the railway, and the plaintiff obtained an ex parte injunction to restrain the company from proceeding to assess, on the ground that the notice served on him did not correspond with the plan, and did not properly specify the lands intended to be taken; upon a motion to discharge the injunction, the Vice-Chancellor of England said, the company was bound by their notice, and as that was contradictory when compared with the plan, and made it difficult to ascertain what lands the company proposed to take, the motion to dissolve the injunction must be discharged with costs. In a subsequent case of *Powell v. The Newmarket and Chesterford Railway Company*, an injunction was also granted, under nearly similar circumstances, the same learned judge laying down the principle generally, that a railway company could only take such portions of land as were properly delineated on the plan, which must in every case correspond with the notice. In the more recent case of *Tawney v. The Lynn and Ely Railway Company*,^b it appeared that the railway company desiring to take possession of certain lands of the plaintiff, in the parish of Littleport, and County of Cambridge, served him with three distinct notices under their act. The first notice was served on the plaintiff in March, 1846, and specified certain lands required to be taken. After some correspondence between the parties, this notice was waived, and a second notice was served by the company on the 16th of December, in which a portion only of the lands contained in the first notice was specified. A notice was then given withdrawing the notice of the 16th, and a fresh notice was served, dated the 24th of December, in which there was a further variation in the quantity of land intended to be taken. Under these circumstances, an injunction was applied for, on the ground that the company had no power to alter by a variety of notices the quantity of land they required. The Vice-Chancellor of England considered

^b Vice-Chancellor of England, 20th March, 1847.

the point quite clear. A notice was given in March, which was subsequently treated as a nullity by both parties. Then the company gave a new notice, but nothing was done under it, and afterwards there came the notice of Dec. 24; but, although the company withdrew their previous notice, still there was no evidence of the plaintiff having consented to that withdrawal, and it was his opinion that the defendants were bound by the notice of Dec. 16; and without the consent of the plaintiff, to whom the previous notice was given, no subsequent notice could be valid; otherwise, a company might go on from month to month giving fresh notices, and the person upon whom they were served would never know how to act with regard to his land. The injunction must, therefore, be granted. In coming to this conclusion, his Honour took occasion to observe generally, that railway companies had no right to take any portion of land belonging to individuals, unless they proceeded in strict compliance with the provisions of the acts of parliament, and he added, that unless the strictest hand were kept, a railway company might turn the act into an instrument of tyranny, and persons might be totally disabled from dealing with their property as their own. It was, therefore, the duty of a court of equity to protect individuals against any undue exercise of the powers of a railway act, which could not be effectually done by proceedings at common law. As regards the shareholders in railway companies, and those who have lent their property upon the security of those undertakings, the case of *Colman v. The Eastern Counties Rail. Comp.*, decided by the Master of the Rolls, involves the assertion of a principle of the utmost importance. It was intended to establish a steam packet company to trade between Harwich and the northern ports of Europe, and as it was supposed that such a company would produce an increase of traffic to the Eastern Counties Railway, the directors of the latter proposed, with the sanction of a majority of the shareholders, to guarantee to the subscribers of "The Harwich Steam Packet Company" interest at the rate of 5*l.* per cent. on the subscribed capital, and if the steam packet company should prove unsuccessful and be dissolved, then that the railway company should reimburse the proprietors of the steam packet company in the full amount of the subscribed capital. Under these circumstances, Mr. Colman, one of the shareholders of the Eastern

Counties Railway Company, filed a bill against the directors of that company, to restrain them from entering into the proposed agreement with "the Harwich Steam Packet Company," on the ground that it amounted to a breach of trust, and that the directors had no power, even with the consent of a majority of the shareholders, to pledge their funds for a purpose totally different from that for which the company was incorporated. On the part of the company, it was suggested that the plaintiff was an instrument in the hands of the London Steam Navigation Company, whose interests might be injuriously affected by competition with the proposed "Harwich Steam Packet Company;" and, although it was admitted that the railway company could not enter into new trades or lines of business not contemplated by the act, yet it was insisted, that the company, with the consent of a majority of the shareholders, might lawfully pledge their credit or funds to encourage a speculation which would ultimately increase the traffic of the railway, and benefit the shareholders. It was also stated on affidavit, that it had been the general practice of all railway companies to act upon the principle now contended for, by indemnifying the proprietors of coaches and other vehicles, and guaranteeing them a certain amount of profit upon the conveyance of passengers and goods between railway stations and adjacent towns, and that such contracts had been generally productive of benefit to railway companies.

After an argument which extended over a considerable portion of four days,* the Master of the Rolls delivered an elaborate judgment. He disposed of the personal argument founded on the supposed motives of the plaintiff, by observing, that if the merits of the case entitled him to an injunction, the supposed motives which influenced him to sue afforded no answer to it. As to the general principles applicable to cases of this nature, he remarked that, considering the enormous funds subject to the control of railway companies, and the extensive powers which they exercised of interference with the public and private rights of individuals, it was impossible to treat them as ordinary partnerships, or to

* The principal cases cited in support of the application, were *Const v. Harris*, 1 Turn. & Russ. 517; *Latouche v. Earl of Lucan*, 7 Cl. & Fin. 772, and *Webb v. The Manchester and Leeds Railway Company*, 4 Myl. & Cr. 116; 1 Rail. Cas. 576.

say that a degree of vigilance should not be exercised with respect to them not usually applied to common partnerships. The powers conferred by the several acts must in every case be carefully looked into, for it was quite clear these companies had no other powers than those expressly given by the acts under which they were incorporated, or powers which were necessarily to be implied from those expressly given, and which were required for the purposes sanctioned by the act. Ample powers were granted in every case for constructing, maintaining, and properly using the railway, but it could not be successfully contended that they were authorised to enter into all sorts of transactions. As to the argument, that transactions of a character similar to that now complained of, had been acquiesced in by shareholders for the last fifteen or sixteen years, it was entitled, in his Honour's opinion, to very little weight. Many wild and improvident projects had been acquiesced in by shareholders, but such an acquiescence, in the absence of any legal decision, afforded no ground whatever for presuming any transaction to be legal. Now, what was the transaction which the directors of the Eastern Counties Company proposed to enter into? To take upon themselves the whole risk and liability of a steam packet company, in the hope that it might turn out profitably, and indirectly add to the profits of the railway. It was quite clear that this was not within the powers conferred by the act of parliament, and no ingenuity could satisfy a reasonable mind that engaging in such a transaction was necessary for carrying on the traffic of the railway, as provided for by the act. He guarded himself against being understood to pronounce any opinion as to the expediency of the proposed arrangement with the steam packet company: it might be profitable to the railway company and beneficial to the public, and it might be most desirable that the railway company had authority to enter into such an arrangement; but the question was, had the company such an authority under the existing acts? He did not hesitate to say that, in his opinion, the company had no power to pledge any portion of its funds for the support of another company engaged in a hazardous speculation. Their power was limited by the act of parliament and the purposes contemplated by it; and, so far as public policy was concerned, it was of the utmost importance to those who in-

vested their property in railways that the funds should not be hazarded in plausible speculations which might possibly end in ruinous losses. Upon these grounds his Honour held, that the injunction to restrain the company from entering into the particular agreement referred to must continue.

This important and well-considered judgment has been subsequently acted upon in other cases, and unless it shall be reversed by a higher tribunal, must be considered as embodying the principle upon which courts of equity are disposed to deal with questions of this nature.

NEW BILLS IN PARLIAMENT.

LIFE INSURANCE.

THIS is a bill to encourage persons to effect insurances on lives, and it recites that insurances on lives have proved very advantageous as the means of providing for the families of persons effecting the same, and for other purposes; and it is desirable to encourage persons to effect such insurances, and, with that object in view, to secure as much as possible that the claims of the persons for whose benefit such insurances have been effected shall not be defeated by objections on the part of the insurance companies, or other insurers, with whom such insurances have been or shall be effected: That by law at present in all cases where an insurance is so defeated, and the insurance company or other insurers refuse to pay the sum insured, they nevertheless retain and claim to retain the several sums which have been paid to them from time to time as premiums on the policies by which such insurances have been or shall be effected: And such practice is a great discouragement to persons who would otherwise effect such insurances.

It is therefore proposed to enact—

1. That in every case where an action shall hereafter be brought upon any policy of insurance upon any life or lives, it shall be lawful for the plaintiff or plaintiffs (whether he, she, or they be the party effecting the insurance, or a person or persons to whom it has been assigned,) besides a count on such policy, to insert in his declaration a count for money had and received; and if the defendant or defendants shall succeed in showing that the said policy was void or voidable when the same was effected or afterwards, the plaintiff shall be entitled to recover the amount of all sums of money which have been paid as premiums on such policy from the time the same was or became void or voidable, and he shall be entitled to recover the same under the said count for money had and received, in the same manner to all intents and purposes as if the plaintiff in every such case had himself paid the same premiums out of his own monies, and the defendants shall not plead any plea under the Statute

of Limitations to any such count or counts: Provided always, That nothing in this act shall render the defendants liable to refund the said premiums where the policy shall have ceased to be of effect by reason of the premium on the same not having been paid within the time limited for that purpose by such policy, unless such default shall have been waived by the receipt of some premium subsequently accruing or becoming due.

2. That it shall not be lawful for any insurance company or other insurers to object to the validity of any such policy on the ground of any defect, misrepresentation, or other objection, if it shall appear that they have received any more than one premium on such policy after they became acquainted with such defect, misrepresentation, or other objection, unless notice in writing has been given by or on behalf of the company or other insurers, of such defect or misrepresentation, and of the intention of the company or insurers to avail themselves of it.

3. That no such defect, misrepresentation, or other objection shall be any defence to such action if the ground of such defect, misrepresentation, or other objection occurred more than six years before the commencement of such action.

4. That it shall be lawful for any person or persons effecting such insurance, or the person or persons for whom or for whose benefit the same shall be effected, to assign the said policy; and it shall be lawful for the person or persons to whom such policy shall be assigned, and every person or persons with whom any such policy has been deposited by way of security for any loan or advance of money made to him, her, or them, or to any other person or persons, at his, her, or their request, and who shall have given notice of such assignment to the company or insurers who have granted such policy, to sue upon the same in his own name, and to recover the sum thereby insured, in as full a manner to all intents and purposes as the person or persons who assigned or deposited the same, or his, her, or their personal representative, might have done if the same had not been assigned or deposited as aforesaid.

5. That if the party entitled to receive the sum insured by any such policy shall produce the same to the company of assurers mentioned therein, together with the assignment or assignments, or deposit paper or papers thereof, if any, and the probate of the will or letters of administration of the effects of the party whose life shall have been so insured, or of the party who shall have been the legal owner of such policy at the time the sum mentioned therein shall have become payable, the said company shall be obliged to pay the sum thereby insured to the party so entitled as aforesaid, whether the said probate or letters of administration so produced as aforesaid shall have been granted by a metropolitan or prerogative court, or by a diocesan or other court having jurisdiction to grant probates and letters of administration.

REPORT OF SELECT COMMITTEE ON PRIVATE BILLS.

THE Select Committee appointed "to continue the inquiry into the private business of the House, the expenses attending the obtaining of all private bills, including all the expenses of the opponents as well as the promoters of bills, and the taxing of expenses relating thereto," and who are empowered to report their opinion thereupon, together with the evidence taken before them, from time to time, to the House;—Have considered the matters referred to them, and agreed to the following Report:

Your committee have made considerable progress in their inquiries; and having obtained full information on the subject of fees paid to the House, on the taxation of costs, and the formation of committees on private bills, have agreed to the following report upon these points, reserving the other subjects of their inquiries for a future report:

Fees of the House.

It appears that the fees consist of a great variety of small items, charged on every stage of the proceedings on private bills. These fees are so complicated as not be easily understood, either by the clerk who has to collect them, or by the parties who have to pay them.

Since of late years all the officers of the House have been remunerated by fixed salaries, and all fees have been carried to the credit of commissioners appointed by act of parliament to receive them, there are now no persons individually interested, as formerly there were, in the number or amount of these fees. The House, therefore, is perfectly at liberty to make any alterations regarding them which it may think fit.

This subject has been for some time under the consideration of Mr. Speaker, and by his desire Mr. Dorington, the Clerk of the Fees, has laid before the committee a table of fees constructed upon a different principle, by which it is contemplated to abolish the present system of charging a great many small fees on the various proceedings of a bill, and to substitute a few larger fees, to be charged on the principal stages; viz., one fee on presenting the petition for a bill, one on going into the committee on the bill, one for each day in committee, and one on each of the readings of the bill, with other minor alterations and regulations; and these suggestions have received the decided approbation of your committee.

Your committee have also called for an estimate of the fees to be collected under the proposed new scheme, and of the income likely to arise from such fees, calculated for an amount of business annually equal to that of the year 1844. Your committee recommend that the fees be fixed on such a scale as, with the assumed amount of business, to produce as nearly as possible the amount received in ordinary years. They therefore submit to the House, that Mr. Speaker be requested to cause to be

prepared a table of fees based on the principles above stated, with a view to such table being adopted by the House, and brought into operation, either from the commencement of the present session, or as soon as may be.

Taxation of Costs.

In the last session of parliament the Select Committee on Private Bills reported to the House their opinion, "that although the fees payable to parliament on local and private bills are fixed and known, yet the charges of solicitors and agents for promoting or opposing such bills are very uncertain, and often very extravagant; and as there is no scale established by parliament for such charges, it is desirable, for the protection of the public, that a proper taxing officer, such as is attached to courts of justice, should be appointed under the authority of the Speaker, and a scale of taxation be authorised and published by him for the guidance of all parties promoting or opposing local and private bills."

Your committee have taken further evidence upon the subject, and are satisfied that no time should be lost in establishing an efficient taxation of parliamentary costs and charges in accordance with the opinion above expressed. In order to effect this object it will be necessary to pass an act in the present session, enabling Mr. Speaker to appoint a taxing officer or officers, who shall have all the powers possessed by the Taxing Masters of the Court of Chancery, and shall examine and tax, as well all preliminary expenses incident to applying to parliament for private bills, as all charges for soliciting or opposing the same.

Your committee are of opinion, that the fee to be charged upon the taxation of costs should be as moderate as shall be compatible with due performance of their duty; and further, that every facility should be afforded both to the promoters and opponents of private bills, or parties liable to pay such costs, for obtaining the relief which such taxation will afford.

In accordance with this view, your committee think that the parties who have been engaged either in promoting or opposing any private bill, and who object to the charges of solicitors or agents, should be at liberty within six months from the termination of the session of parliament in which such bill may have passed, or within six months next after the bills of such solicitors or agents shall have been delivered to the parties, to apply in writing to Mr. Speaker, who shall then give the requisite orders for the taxation of such charges.

Your committee also think that the parties should have power to obtain from their agents and solicitors the delivery of their bills of charges within a reasonable time; they recommend, therefore, that at the expiration of six months from the close of any session of parliament, it should be open to any party who has not received the bill of charges to be claimed from him for service, in respect of any private business in that session, or of proceedings pre-

liminary thereto, to apply to Mr. Speaker; that Mr. Speaker should have power to give such directions as he may think fit with respect to the time within which such bill shall be delivered; that Mr. Speaker should have power from time to time to alter such directions, and to enlarge the time originally directed, or, under special circumstances, altogether to relieve the agent or solicitor from the operation of the rule, if he shall see fit to do so; and that, subject to such discretion of Mr. Speaker, the original direction shall be conclusive, and the agent or solicitor failing to comply with the same shall have no power of recovering his charge against the party.

Your committee is further of opinion that the costs and expenses attendant upon bills promoted or opposed by corporations, and public bodies, however constituted, in trust for and on behalf of the public, should in all cases be taxed.

Your committee therefore have requested their chairman to ask leave of the House to bring in a bill to carry those purposes into effect.

Formation of Committees on Private Bills.

Your committee having taken evidence as to the present working of committees on railway bills, and finding a general approval of their efficiency, are of opinion that all committees upon opposed private bills should be appointed and constituted in the same manner as committees upon railway bills.

Your committee having had before them the bill intituled "A Bill for consolidating in one Act certain Provisions usually contained in Acts for Paving, Draining, Cleansing, Lighting, and Improving Towns," referred to them by the House, are of opinion that the measure is not of a character to be satisfactorily considered by them, and they have therefore requested the chairman to submit to the House whether the order of reference may not be discharged.

29th March, 1847.

QUESTIONS ON THE PRACTICE.

RELATING TO

THE RETAINERS OF COUNSEL.

THE practice relating to the retainers of counsel is in many respects in an unsettled state, and disputes frequently arise, as well between the clerks of barristers and attorneys, as between attorneys themselves. It would be unquestionably a great service to both branches of the profession if the several points on which differences of opinion prevail could be adjusted. The result would also be advantageous to the suitors and satisfactory to the court.

The clerks of counsel, in their laudable desire to discharge their duty to their masters, (and naturally not inattentive to

their own interests,) have of late mooted several new and important points in the practice of retainers, of which probably many of our readers are totally unacquainted.

For the purpose, it seems, of considering the justice and expediency of these new claims, and making known the general practice on the subject of retainers, the council of the Incorporated Law Society (to whom we understand many communications have been made on the subject) have sent out the following questions to every attorney and solicitor practising in London.

The information which it is expected will be collected from the profession at large in answer to these questions will, no doubt, go far to ascertain the present state of the practice, whether *right or wrong*; and may lead to suggestions for placing it upon a satisfactory basis. The result of the inquiry, we understand, will be submitted to the leading members of the bar, in order ultimately to adjust the proper rules and regulations for the guidance of solicitors in retaining counsel.

If the Law Society should succeed in their efforts, we are sure that much service will be rendered to the due administration of justice, for several of the supposed rules in the practice of retainers are contrary to the clearest principles, not only of a nice sense of honour, but of ordinary integrity. There are indeed some things which it is assumed that a barrister is bound to do, which if done by an attorney would subject him to be struck off the roll, and we cannot doubt that the majority of the bar will readily co-operate in setting at rest many questions which, as they at present stand, cannot bear the test of a public discussion, and of withdrawing many others from the questionable discretion of their clerks, and placing it in the hands of the Masters of the courts, or some other impartial persons.

Some of the questions will doubtless appear to be merely suggestive of imaginary difficulties; but we are assured that every point involved in them is the result of *actual experience*; that only one-fourth of the questions are clearly *settled and approved*; that others, though conformable to practice, cannot be maintained on principle; and that one-half of them are in a disputable state.

1. Does a general retainer apply to all courts in which the counsel usually practises?

2. If the counsel should be offered a retainer by the opponent of the party having given such

general retainer, in any other court than that in which he usually practises, does the general retainer entitle the party to notice before the offered retainer is accepted?

3. Does it last for the joint lives of the client and counsel?

4. When a general retainer is given for a partnership or a firm, does it continue during the lives of the surviving partners; or in case of any change in such partnership or firm by the introduction of new or the retirement of original partners?

5. When a general retainer is given for a corporation, will any, and what act, avoid that retainer? and is any, and what, renewal required?

6. Is the counsel bound, in case a special retainer or brief is offered to him against the party who has given a general retainer, to ascertain whether it is the intention of the last-named party to give a special retainer in the cause; and if an answer be returned in the negative, is the barrister then at liberty to accept the special retainer or brief of the other party?

7. May a special retainer be given before the commencement of an action at law or a suit in equity?

8. Does a special retainer give the client a right to the services of the counsel during the whole progress of the cause in all its different stages including interlocutory applications, appeals, writs of error, bills of exception, or rehearing?

9. If a brief be not delivered on every occasion in which the case is brought before the court, is the *special* retainer considered as abandoned?

10. In case a *general* retainer has been given, and a brief should not be delivered to the retained counsel in any action or suit in which the party giving the general retainer is concerned, is the general retainer entirely lost, or only superseded as to the particular cause in which a brief has not been delivered.

11. Where a general retainer is given for one person, and he is sued in an action with others, and he defends *separately*, is the retainer binding? and is it otherwise if he defend jointly?

12. Must a special retainer in a country cause be for a particular assize?

13. If the venue be changed for another place on the same circuit, is a fresh retainer required?

14. If the cause be not tried at the first assizes, must the retainer be renewed for every subsequent assize, or until the cause is disposed of?

15. Can a retainer be given for the summer assizes or before the commission day of the spring assizes without a retainer for the spring assizes also?

16. When must the retainer be renewed after each assize?

17. Can a special retainer in an appeal be received before the appeal has been lodged?

18. May counsel in the original cause accept

a retainer on the appeal for the opposite party without notice to the first client?

19. Where counsel has advised on a case, or drawn pleadings, and a retainer is offered on the other side, must it be accepted without notice to the first client?

20. When a retainer is given by the plaintiff in a cause *A. v. B.*, and an action is afterwards brought by *B. v. A.*, must the counsel take the retainer of *B.* without notice to *A.*?

21. Will a mistake in the title of the action or suit render the retainer inoperative, if it can be shown that the cause of action is the same, and there is no other to which the retainer could apply?

22. Does the retainer of a junior counsel in a cause cease upon his being promoted to a higher rank at the bar; and is the first client entitled to notice before the acceptance of the adverse retainer?

23. Can any more satisfactory mode of deciding disputes between the different suitors as to the right of retainer, than that which is now practised, be suggested?

24. Are the fees given for *general* retainers as follow?

In the Courts of Queen's Bench, Common Pleas, Exchequer of Pleas, five guineas.
Chancery and Bankruptcy Appeals, five guineas.

Bankruptcy, five guineas.

Parliament, ten guineas.

Privy Council, ten guineas.

25. Are the fees given for *special* retainers as follow?

At Common Law and in Equity, one guinea.

In Parliament, on Bills and Election Committees, five guineas.

On Appeals to the House of Lords, two guineas.

In the Privy Council, two guineas.

26. Have you met with any cases with reference to the retainers of counsel which have been productive of injury to clients, or inconvenience in transacting business? And if so, you are requested to state the same, and suggest such alterations in the practice as appear to you expedient, in respect as well to those cases as in the general law and practice of retainers.

EASTER TERM EXAMINATION.

THE Examiners of persons applying to be admitted attorneys, have appointed Tuesday, the 27th April, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the examination.

The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left on or before Thursday, the 22nd April, at the Law Society's office.

Where the articles have not expired, but will expire during the Term, the candidates may

be examined conditionally, but the articles must be left within the first seven days of Term, and answers up to that time.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—

1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity and Practice of the Courts. 5. Bankruptcy and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the Preliminary Questions (No. 1.); and it is expected that he should answer in *three* or more of the other heads of inquiry,—*Common Law* and *Equity* being two thereof.

TAXES ON THE ADMINISTRATION OF JUSTICE.

WHEN the general question of the vast expenditure for administering justice, as well as the Chancery compensations and salaries in particular, were brought under the consideration of the House of Commons, on the 7th May, last year, on Mr. Watson's motion for a committee of inquiry, we earnestly called the attention of our readers to the subject. Sir Robert Peel, who was then in power, fully admitted the principle contended for, and promised the concurrence of government in the general measure, though he resisted the limited inquiry to the Chancery compensations. Since then a return has been ordered by the House of Commons of all fees in every court of justice throughout the kingdom, and it has been suggested, that unless the investigation proceed step by step, it is not likely that much good will be effected for years to come. It is therefore recommended,—first, to deal with the Court of Chancery, where the fees fall so heavily on the suitor as not only to impede the due administration of justice, but to drive from the court a large amount of business on which it is alone adequate to adjudicate. The present enormous expense induces parties to seek the institution of new-fangled tribunals, or new boards of commissioners. The remedy for this crying evil was ably and successfully shown by the present Lord Chancellor on opposing Lord Lyndhurst's Charitable Trusts Bill in the last session. The remedy is to be found in the *reduction of the fees*.

Every distinguished Lord Chancellor, from Lord Hardwicke downwards, has endeavoured, but hitherto ineffectually, to remove this incubus from the court. The

six clerks and sworn clerks were its greatest burdens. Lord Lyndhurst, in 1828, curtailed a gross abuse in their charges. Lord Brougham, in 1833, in vain attempted their total removal, which was at length achieved by Lord Langdale.

We understand that the practice in the Masters' offices is now under the consideration of the Lord Chancellor, and it is to be hoped some measure will be introduced for the effectual amendment of that practice. If his lordship could bestow that attention which the subject requires, enforced by his long practice and entire acquaintance with the subject, aided as he would be by every branch of the practitioners, and by due support in parliament, we doubt not that an adequate remedy would speedily be found, and all unnecessary delay entirely removed.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Common Law.

PLEADINGS.

AMBIGUITY.

1. To a count by *A.* against *B.* for goods sold and delivered, *B.* pleaded, as to 4*l.*, parcel, &c., that on a certain day, at the request of *A.*, he delivered to *C.*, for *A.*, certain goods; that it was "then," to wit, on the day and year aforesaid, in consideration thereof, agreed between *A.* and *B.*, that *A.* should accept such delivery to *C.* in full satisfaction and discharge of the premises as to the 4*l.*, &c.; and that *A.* did "then" accept such delivery in full satisfaction and discharge. *Held*, on special demurrer for ambiguity, that the plea was bad, inasmuch as it might mean either that the agreement to accept the delivery of the goods to *C.* in satisfaction took place at the same time as the delivery, or at a subsequent period. *Stead v. Poyer*, 1 C. B. 782.

Quære, as to the effect of a subsequent agreement founded upon a delivery at the plaintiff's request.

2. *Duplicity*.—*Judgment non obstante veredicto*.—In trespass for breaking and entering the plaintiff's mill, and taking his fixtures, &c., the defendants pleaded a title in *A.*, as sub-lessee of the premises for a term of years, and that, *A.* becoming bankrupt before the lease expired, the defendants, as his assignees, elected to take to the lease, and entered and became possessed of the mill, &c., giving the plaintiff express colour.

The plaintiff replied, that *A.*, before his bankruptcy, made a sub-lease to *B.* by way of mortgage; that, after *A.*'s bankruptcy, and whilst *B.* was so possessed, it was agreed between *A.*, *B.*, and the plaintiff, that *B.* and *A.* should

grant an underlease of the mill to the plaintiff, and should sell him the fixtures, &c., at a certain price; and that the plaintiff, with the consent of *B.* and *A.*, before the bankruptcy of the latter, entered and became possessed of the mill, and of the fixtures, &c.

Held, that the replication was not objectionable on the score of ambiguity or of duplicity, the whole statement therein forming one complete title in the plaintiff to the possession of the *locus in quo*, and of the fixtures, &c. And, *per curiam*, a plaintiff is never entitled to a judgment *non obstante veredicto* upon the ground of the insufficiency of the defendant's pleading, where the issue on the plea or rejoinder is found for the defendant, and against the plaintiff, unless such plea or rejoinder implies an admission of the plaintiff's title. *Pim v. Grazebrook*, 2 C. B. 429, S. C. 3 D. & L. 454.

Cases cited in the judgment: *Bell v. Tuckett*, 3 M. & G. 735; 4 Scott, N. R. 403; 1 Dowl. N. S. 458; *Gwynne v. Burnell*, 6 N. C. 453; 1 Scott, N. R. 711; *Hitchcock v. Humfrey*, 6 Scott, N. R. 510.

ARGUMENTATIVE TRAVERSE.

1. The plea of "no award" means no *valid* award. Therefore, a special plea to debt on award, which showed that the arbitrator had not awarded on all the issues in the cause referred to him, was held bad on special demurrer, as being an argumentative denial of its being a valid award. *Dresser v. Stansfield*, 14 M. & W. 822.

Case cited in the judgment: *Gisborne v. Hart*, 5 M. & W. 50.

2. Assumpsit on a bill of exchange, drawn by *W.* on, and accepted by, the defendants, payable to the order of *W.* six months after date, and indorsed by *W.* to the plaintiff.

One of the defendants (*H.*) let judgment go by default: the other defendants pleaded, that, after they accepted the bill, and before it became due, and before it was indorsed to the plaintiff as in the declaration mentioned, *W.* waived the acceptance of the bill, and exonerated and discharged the defendants from the same, and from the payment of the bill; and that no person ever gave or received any consideration for the said indorsement. Another plea differed from the above only in stating, as the concluding averment, that the bill was indorsed to the plaintiff after it became due: *Held*, on special demurrer, that these pleas were bad, for not showing that *W.* was the holder of the bill at the time of the alleged waiver by him.

Another plea stated, that, after the making and accepting of the bill, and before it became due, it was delivered, so accepted by the defendants, to *W.*; and that, while *W.* was the holder and payee, and before it became due, *W.* indorsed it to the defendant *H.*, and delivered it so indorsed to *H.*, with the intention of divesting himself, and whereby he did divest himself, of all right, title, and interest in and to the bill, and of the right of suing thereon,

and of indorsing the same again; that the bill was so indorsed to *H.* for a valuable consideration; that *H.* continued to be the holder of the bill from the time of the said indorsement thereof to him by *W.*, until it was delivered by *H.* to the plaintiff; that the indorsement in the declaration mentioned consists merely of the last-mentioned delivery by *H.* to the plaintiff of the bill so indorsed by *W.*; and that it never was indorsed by *W.* otherwise than in this plea mentioned; and that, when it was so delivered by *H.* to the plaintiff, he had notice and knowledge of all the matters in this plea mentioned. There were other pleas, which differed from the above only in stating, (instead of the allegation of notice,) that there was no consideration for the delivery of the bill to the plaintiff, and that it was delivered to him after it became due: *Held*, on special demurrer, that these pleas were bad, as amounting to an argumentative traverse of the indorsement to the plaintiff.

The directors of a company incorporated by act of parliament for making a cemetery, being empowered thereby to make contracts and bargains touching the undertaking, and to do and transact all other matters which shall be requisite to be done and transacted for the direction and management of the affairs of the company, are not thereby authorised to raise money for the purposes of the undertaking by accepting or indorsing bills of exchange. *Steele v. Harmer*, 14 M. & W. 831.

ATTORNEY.

Allegation of retainer.—A declaration in assumpsit stated, that the defendant was an attorney, and that, in consideration that the plaintiff would retain him as such attorney to conduct an action of tort at the suit of *B.* against *L.*, the defendant promised to fulfil his duty as such attorney, in and about prosecuting the said action and recovering damages, that the defendant did, under the said retainer, commence an action against *L.*, in which judgment was recovered against him for 56*l.*; that the defendant afterwards, as such attorney as aforesaid, for obtaining satisfaction of the said damages, sued out a *fi. fa.* against *L.*, to which the sheriff returned that he had levied 9*l.*, part of the damages, and *nulla bona* as to the residue; that the defendant, as such attorney as aforesaid, for obtaining satisfaction of the said residue, issued a *ca. sa.*, under which *L.* was imprisoned, and paid the residue of the damages to the gaoler, who paid the same to the defendant, as such attorney as aforesaid; and that before he received the same, he sent, as such attorney as aforesaid, to the gaoler a discharge of *L.* out of custody, by virtue of which he was discharged. Breach, that, although the defendant received the said damages, and the plaintiff paid to him, as such attorney as aforesaid, his costs of prosecuting the said action, he did not pay over to *B.*, or the plaintiff, the residue of the said damages. *Held*, that this declaration was bad, on special demurrer, for not showing distinctly that the

money was received by the defendant, under his original retainer by the plaintiff in the action against *L.* *Bevins v. Hulme*, 15 M. & W. 88, S. C. 3 D. & L. 727.

Cases cited in the judgment: *Brachenbury v. Pell*, 12 East, 588; *Tipping v. Johnson*, 2 Bos. & P. 257; *Lamb v. Williams*, 1 Salk. 89.

BANKING COMPANY.

Sci. fa. public officer.—*Sci. fa.* declaration, that plaintiff, as public officer of a banking company, under 7 W. 4, c. 46, recovered in the original action against *B.*, as the registered officer of a steam-packet company, to which letters patent had been granted under stat. 7 W. 4, and 1 Vict. c. 73, damages by reason of the non-performance of a promise of the steam-packet company, and costs; that plaintiff was still one of the public officers of the banking company, and that, although judgment had been given, execution of the damages still remained to be made; that the defendant in the *sci. fa.* at the time of making the promise, and from thence until and at the giving of the judgment, was and thence hitherto hath been, and still is, a member of the packet company: *Held*, that the declaration was not bad for showing whether the letters patent contained any declaration, under stat. 7 W. 4, and 1 Vict. c. 73, s. 4, limiting the liability of defendant in the *sci. fa.* to any, or to what extent; such limitation, if any existed, being matter that ought to be pleaded by defendant; and that the declaration, alleging that the defendant was a member when the promise was made, showed sufficiently that he was a member when the cause of action accrued.

Plea 3, that defendant was not, at the time of the commencement of the original action, liable thereto, as an existing or a former member of the packet company, concluding to the country: *Held* bad, on special demurrer, as not taking issue on any matter alleged in the declaration, and yet concluding to the country.

Plea 4, that the packet company was not formed by any deed of partnership, &c., in compliance with stat. 7 W. 4, and 1 Vict. c. 73; verification: *Held* bad, on special demurrer, as setting up a defence which might have been pleaded to the original action.

Plea 5, that the original action was for a demand, in respect of which neither the defendant in *sci. fa.*, the packet company, nor the defendant in the original action as such registered officer, was by law liable, as plaintiff at the commencement of the action well knew; and that, the registered officer of the packet company and the plaintiff well knowing the premises, the registered officer of the packet company fraudulently and deceitfully, and by connivance with the plaintiff, suffered judgment in order to change defendant in the *sci. fa.* verification: *Held*, that the plea was good, as containing a sufficient allegation of fraud and collusion between plaintiff and the nominal defendant in the original action; and that the defendant in the *sci. fa.* was entitled to avail himself of such defence by plea: *Semble*, that de-

defendant might have availed himself of that defence by motion to set aside the judgment.

Plea 6, setting out the record of the original judgment, which was in an action of assumpsit by indorsee against drawer on a bill of exchange drawn and indorsed by B., as the agent of the packet company, that B. did not, as agent of defendant, draw or indorse the bill, nor did defendant ever ratify the drawing or indorsing thereof, verification: *Held*, bad, on special demurrer, because the defence might have been pleaded to the original action. *Philpison v. Earl of Egremont*, 6 Q. B. 587.

Cases cited in the judgment: (4th plea) *Bradley v. Eyre*, 11 M. & W. 432; (5th plea) *Bradley v. Eyre*, 11 M. & W. 450; *Fowler v. Rickerby* 2 M. & G. 760; *Bosanquet v. Graham*, 6 Q. B. 601, n. a.

BANKRUPT.

Construction of bond.—Render of principal.—To debt against one of the principals, on a bond, with sureties, given under 1 & 2 Vict. c. 110, s. 8, reciting, that the plaintiff had filed and served an affidavit of debt in bankruptcy against the defendant and his partners, and conditioned for the payment of such sums as should be recovered in any action which had been or should be brought for the recovery of the debt, or for the render of themselves by the defendant and his partners to the custody of the court in which such action had been, or might be brought, “according to the practice of such court, or within such time, and in such manner as the said court, or any judge thereof, should direct, after judgment should have been recovered in such action or actions,” the defendant pleaded, that, after the recovery of the judgment, and before the commencement of the action, no *ca. sa.* was sued out against the defendant and his partners, or any of them: *Held*, a good plea.

The declaration further stated a judgment recovered by the plaintiff in the Court of Exchequer, for the debt in the condition of the bond mentioned, and that, after the recovery of the judgment, an order was made by *Coleridge, J.*, on the *ex parte* application of the plaintiff, that the defendant and his partners should render themselves within ten days after service of the order: *Held*, that a plea that the order of *Coleridge, J.*, was made before the time for rendering the defendant and his partners according to the practice of the court had expired, and was made *ex parte*, and without any previous summons, was bad; for, that it was consistent with the order that the time for rendering would have expired before the time limited by that order for the defendant and his partners to render; and it was no ground of objection to the order that it was made *ex parte*, such irregularity (if any) not being the proper subject of a plea.

The declaration also alleged that the time for rendering had been further extended, by two orders of *Cresswell, J.*, until the 5th day of Michaelmas Term, that before that day, a rule *nisi* was obtained to set aside the order of *Coleridge, J.*, and to enlarge the time to render, by

which rule the proceedings in the original action and against the bail were stayed; and that the defendant and his partners did not render themselves within the time mentioned in the orders, or any of them, or within any other time, or in any other manner lawfully directed by the court, or any judge thereof. Plea, that the first order was made before the time of the render of the defendant and his partners, according to the practice of the court; that the subsequent orders, and the rule *nisi*, were respectively made before the expiration of the extended times for rendering; that on cause being shown against the rule *nisi*, the court ordered, “that the defendant and his partners, and their bail or sureties,” should have ten days further time to render; and that before the expiration of the ten days, they did render: *Held*, a good plea, on the ground that the rule *nisi* staying the proceedings, preserved the jurisdiction of the court to grant the further extension of the time. *Hinton v. Acraman*, 2 C. B. 367; S. C. 3 D. & L. 426.

BILL OF EXCHANGE.

1. *Held*, in Q. B., in an action by the indorsee of a bill of exchange against the acceptor, where the plea stated that the bill was accepted for the accommodation of the drawer, to be by him deposited with R. as collateral security for a debt due from the drawer to R.; that before the bill became due, the drawer paid off the debt, and that R. afterwards indorsed to the plaintiff, in order that the plaintiff, colluding with R., might recover the amount of the bill as trustee for R.; that the plea was in excuse, and not in discharge, so that *de injuriâ* was a good replication. *Herbert v. Sayer*, 1 D. & M. 723.

Cases cited in the judgment: *Young v. Rishworth*, 8 A. & E. 470, S. C. 3 N. & P. 585; *Fyson v. Chambers*, 9 M. & W. 460; *Kitchen v. Bartsch*, 7 East, 53; *Fowler v. Down*, 1 Bos. & Pul. 44; *Drayton v. Dale*, 2 B. & C. 293.

2. *Notice of dishonour, when sufficient.*—In an action by the indorsee of a bill of exchange drawn payable to the defendant or his order, and indorsed by the defendant to the plaintiff, the defendant pleaded, that after the indorsement by him to the plaintiff, and before the bill became due, the plaintiff being then the holder, indorsed it to a person unknown, who presented it to the drawer for acceptance; that the drawer refused to accept it, and that the defendant had no due notice of the dishonour for non-acceptance. The plaintiff replied, *de injuriâ*: *Held*, on motion to enter judgment for the plaintiff, notwithstanding a verdict for the defendant on that issue, that the plea was a good answer to the declaration, inasmuch as it displaced the only title of the plaintiff alleged therein, viz., his titles by indorsement from the defendant. *Bartlett v. Benson*, 14 M. & W. 733, S. C. 3 D. & L. 274; 32 L. O. 608.

3. To an action by indorsee against acceptor of a bill of exchange drawn by W. The defendants pleaded, 4thly, that after they accepted

the bill, and before it was indorsed to the plaintiff, *W.* waived the acceptance. 5thly, a similar plea, alleged that the bill was indorsed to the plaintiff after it was due. 7thly, that the bill was drawn upon the defendants as the directors of a certain company established by act of parliament, and that they accepted it as such directors for a debt contracted by the company. 8thly, a similar plea, denying consideration. 9thly, a similar plea, alleging that the bill was indorsed after it was due. 10thly, that the bill was accepted and delivered to *W.*, he indorsed it to *H.* (one of the defendants) for consideration, and that *H.* delivered the bill to the plaintiff, who had notice. 11thly, a similar plea, denying consideration. 12thly, a similar plea, alleging that the bill was indorsed by *H.* to the plaintiff after it became due: *Held*, on special demurrer, that the 4th and 5th pleas were bad for not alleging that *W.* was the holder of the bill at the time he waived the acceptance.

2ndly, that the 7th, 8th, and 9th pleas were also bad, as the act of parliament gave the directors of the company no power to accept bills.

3rdly, that the 10th 11th and 12th pleas were bad as an argumentative denial of the indorsement of the bill to the plaintiff. *Steele v. Benham*, 3 D. & L. 506.

BUILDING ACT.

The Building Act, 14 G. 3, c. 78, c. 100, enacts, that every action for anything done in pursuance of that act, where the cause of action arises out of the city of London, shall be laid and tried in Middlesex: that the defendants may plead the general issue, and give the special matter in evidence; and if the action be laid in any other county or place than aforesaid, the jury shall find for the defendants. The 5 & 6 Vict. c. 97, s. 3, repeals so much of any act "of a local or personal nature" as permits parties to plead the general issue, and give the special matter in evidence. In trespass for placing bricks, &c., on a wall of the plaintiff, to which the defendant pleaded not guilty by statute: *Held*, that the 14 G. 3, c. 78, was an act "of a local and personal nature," except as to the 84th and 86th sections: and that the defendant could not, under the general issue, avail himself of the defence that he, *bonâ fide*, believed he was acting under the provisions of that act; nor could he, under that plea, object that the venue was laid in the wrong county, but should have pleaded those matters specially.

Held, also, that the New Building Act, (the 7 & 8 Vict. c. 84,) which is printed amongst the public general statutes, is an act of "a local and personal nature." *Richards v. Easto*, 3 D. & L. 515.

CONDITION SUBSEQUENT.

Averment of continuance of estate.—The defendants in replevin having avowed for rent in arrear, the plaintiff pleaded in bar, that before the defendants had anything in the premises, *R. F.* was seised in fee, and by his will gave to

his wife an annuity, (with power of distress,) issuing out of the premises, for her life, if she should so long continue his widow, and should not live with any other man except a father, or brother, or brothers. The plea then alleged the death of *R. F.* without altering his will, whereby his widow became seised of the annuity, and continued so seised until the plaintiff, in order to avoid a distress for arrears of the annuity, paid her the rent mentioned in the avowry: *Held*, that the condition annexed by the will to the gift of the annuity was a condition subsequent; and therefore it was necessary that the plea in bar should aver the continuance of the widowhood, &c. *Brook v. Spong*, 15 M. & W. 153.

Cases cited in the judgment: *Dyer*, 304, b. *Scantier v. Johnson*, Sir Thos. Jones, 227; *Harlow v. Bradnox*, 3 Koble, 151; *Ughtred's case*, 7 Rep. 9 b.; *Colthirst v. Bejushin*, Plowden, 33; *Wynne v. Wynne*, 2 M. & G. 8.

CONDITION PRECEDENT.

See *Contract*.

CONSIDERATION.

1. *Compromise of doubtful claim. Non assumpsit.*—In assumpsit the declaration stated that the plaintiff had brought an action against the defendant in the Exchequer, to recover certain moneys, that the defendant had pleaded various pleas, on which issues in fact had been joined, which were about to be tried, and that, in consideration that the plaintiff would forbear proceeding in that action until a certain day, the plaintiff promised on that day to pay the amount, but that he made default, &c.

Plea, that the plaintiff never had any cause of action against the defendant in respect of the subject matter of the action in the Exchequer, which he, the plaintiff, at the time of the commencement of the said action, and thence until and at the time of the making of the promise, well knew: *Held*, sufficient on general demurrer.

Quere, whether it would have been a good plea, if specially demurred to, for not distinctly averring that the plaintiff must have failed in the former action, or on the ground that it amounted to non-assumpsit.

A further plea set forth a judge's order for staying the proceedings in the action in the Exchequer on payment of the money on the day appointed, and that, in default of payment, the plaintiff should be at liberty to sign judgment and issue execution for debt and costs; and averred that the promise declared on was a promise declared and implied from the obtaining and making that order, and that the order had been subsequently set aside by a rule of the Court of Exchequer: *Held*, bad, on special demurrer, as amounting to non-assumpsit. *Wade v. Simeon*, 2 C. B. 548.

Cases cited in the judgment: *Tooley v. Windham*, Cro. Eliz. 206; 2 Leon. 105; *Atkinson v. Settue*, Willes, 482; *Longridge v. Dorville*, 5 B. & Ald. 117; *Smith v. Monteith*, 13 M. & W. 427; 2 D. & L. 358.

2. *Variance.—Duplicity.*—Declaration in

assumpsit stated, that the defendant had become and was tenant to the plaintiff of certain rooms, on the terms that the defendant should not allow any nails to be driven into the walls, and that if any damage should arise from so doing, he would pay the costs of repairing the same on vacating the apartments; and that, in consideration thereof, the defendant promised the plaintiff to use the rooms in a tenant-like manner, and not to allow any nails to be driven into the walls, &c. &c. The declaration then averred, that the defendant quitted possession of the rooms, and alleged as a breach, that he did not use the rooms in a tenant-like manner, but, on the contrary thereof, had pulled down bells, and broke chimney-pieces and stoves, and drove nails into the walls; and although the costs of repairing the injuries to the walls amounted to 150*l.*, he had not paid that sum, or any part thereof, to the plaintiff: *Held*, on general demurrer, that this declaration showed a sufficient consideration for the defendant's promise, by alleging that he had become tenant on the terms of the special agreement, and that it was not necessary to allege that he became tenant to the plaintiff at his, the plaintiff's request; 2ndly, that the breach was sufficient, although it was not alleged that the bells, stoves, &c., were the property of the plaintiff; 3rdly, that there was no variance between the promise and the breach, by reason of the promise being that the defendant should pay the costs of the repairs generally, and the breach that he did not pay them to the plaintiff.

A plea to this count stated, that after the making of the promise, so far as related to the driving of the nails, the defendant paid the costs of repairing the injuries occasioned thereby: *Held* bad, as answering only a part of the count.

Another count of the declaration was framed upon a promise that, in consideration of the plaintiff permitting a brass plate to be fixed on the outer door of the house, the defendant would cause a new outer door to be made and fixed up in the entrance of the house on the expiration of the tenancy. To this count the defendant pleaded, that he was ready and willing, &c., tendered and offered to the plaintiff to cause a new door to be made, &c., which offer the plaintiff refused to accept, and prevented the defendant from causing it to be made and fixed up, and refused to allow him to enter into the house for the purpose, and the plaintiff wholly declined, and disavowed, and discharged the defendant from carrying the said agreement and promise into effect: *Held* bad for duplicity. *Dietrichson v. Giubilei*, 14 M. & W. 845, S. C. 3 D. & L. 293; 32 L. O. 610.

CONTRACT.

Condition precedent.—Amendment.—The declaration stated that, in consideration that the plaintiff would accept, receive, and pay, for certain goods, the defendant promised to supply them of the various sizes to be shown in drawings to be provided by the plaintiff's architect, at a certain price, and to use his, the

defendant's, best endeavours to deliver certain quantities on certain specified days, provided the drawings for the 1st quantity were sent to the defendant within 3 days, and for the remainder within 3 weeks; and averred that, although the plaintiff had always been ready and willing to accept and receive the goods, and although he did *within a reasonable time* after the making of the agreement, duly, and according to the said agreement, provide drawings, &c., and although a reasonable time had elapsed, the defendant did not, within a reasonable time, supply the goods.

Plea, that the plaintiff did not, *within the time so agreed upon*, duly, and according to the agreement, provide or deliver drawings, &c.: *Held*, bad, the delivery of the drawings, within the specified times, not being a condition precedent to the plaintiff's right to complain of a non-delivery within a reasonable time. *Kingdom v. Cox*, 2 C. B. 661.

See *Railway*, 2.

COVENANT.

In an action of covenant the defendant pleaded, under the statute 3 & 4 W. 4, c. 42, that the cause of action did not accrue within 20 years; replication, that the cause of action did accrue within twenty years. The plaintiff produced at the trial several letters from the defendant for the purpose of showing an acknowledgment of the debt within twenty years. *Held*, that the question, whether such letters amounted to an acknowledgment of the debt sufficient to bring the case within the provisions of the statute, was not admissible under that form of replication. *Kemp v. Gibbons*, 33 L. O. 46.

DEBT FOR PENALTY.

In an action of debt to recover a penalty, under the 31 C. 2, c. 2, s. 10, against a judge for refusing to grant a writ of *habeas corpus*, it should appear affirmatively in the declaration that the plaintiff was in custody on a criminal or supposed criminal charge, and it should appear negatively that he was not in custody either on any charge of felony or treason, or in execution by legal process. *Andrews v. Lord Lyndhurst*, 33 L. O. 453.

DUPLICITY.

Declaration.—In debt on a promissory note, by payee against maker, the declaration, after showing that the writ issued on the 17th May 1845, alleged that the defendant, on the 25th March, 1844, made his note in writing, and thereby promised to pay to the plaintiff or order, 690*l.* on the 25th March, 1845, which day had expired before the commencement of the suit, and then delivered the note to the plaintiff; and that thereupon the defendant then agreed to pay the amount of the said note to the plaintiff, on request.

Special demurrer, assigning for causes that the declaration was double and inconsistent, and that it was uncertain whether the plaintiff intended to rely on an express or an implied agreement: *Held*, that the declaration was sufficient.

Duplicity is no objection to a count. *Shepherd v. Shepherd*, 1 C. B. 849.

*Cases cited in the judgment: *Owen v. Waters*, 2 M. & W. 91; *Abbott v. Alett*, 1 M. & W. 209; *Galway v. Rose*, 6 M. & W. 291.

And see *Ambiguity*; *Consideration*, 2.

ESTOPPEL.

In 1742 a farm was demised by the Broderers' Company to *F.* for 100 years, with a covenant for perpetual renewal. In 1827 the residue of this term had become vested in *B.*, who, in that year, assigned it by way of mortgage, with a proviso for redemption. On the 22nd May, 1828, *H.* demised the same farm for 21 years to the plaintiff. On the 12th Jan. 1836, the mortgagees and *H.* surrendered the premises to the Broderers' Company. On the 13th Jan. 1836, the company demised them to *H.* for 100 years; and shortly afterwards the unexpired residue of that term, and all the estate and interest of *H.* in the premises, were assigned to the defendant.

In an action by the plaintiff against the defendant, on a covenant in the lease from *H.* to the plaintiff, to keep down the rabbits on the farm, the defendant pleaded, 1st, that *H.* did not demise to the plaintiff; 2ndly, that the reversion on that lease did not vest in the defendant: *Held*, that both these issues ought to be entered for the plaintiff; for that the lease, being by deed, was a good demise by way of estoppel, and a reversion in *H.* by estoppel was thereby created, which *prima facie* was a reversion in fee, and therefore was not surrendered to the Broderers' Company, but passed from *H.* to the defendant. *Sturgeon v. Wingfield*, 15 M. & W. 224.

EXECUTOR.

1. *Use and occupation.*—Action against executors under stat.—The plaintiff declared against *A. & B.* as executors, alleging that they, as executors, were indebted to him for the use and occupation of certain messuages, held by him of them as executors under a demise to the testator, and that, in consideration of the premises they, as executors, promised to pay.

Plea, by *A.* that *B.* never was executor, nor ever administered, &c.: *Held*, that the declaration was good in substance, and that the plea was bad, as setting up a personal discharge, of which *B.* only could avail himself. *Atkins v. Humphrey*, 2 C. B. 654.

Case cited in the judgment: *Pinero v. Judson*, 6 Bing. 206; 3 M. & P. 497.

2. *Ne unques.*—To a declaration charging the defendant as executor, the latter pleaded that he never was executor of the last will, &c., nor ever administered any of the goods or chattels, &c., as in the declaration alleged, concluding to the country: *Held*, that the plea was properly concluded. *Wood v. Kerry*, 2 C. B. 515, S. C.; 3 D. & L. 642.

Cases cited in the judgment: *Scott v. Wedlake*, 14 Law J., N. S., Q. B. 359; *Coulter's case*, 5 Rep. 30.

3. A plea by one of two persons charged as executors, that the other is not an executor, is bad. *Atkins v. Humphrey*, 3 D. & L. 612.

FRIVOLOUS DEMURRER.

Signing judgment.—*Issue.*—*Trial.*—A defendant having demurred to a replication to one of several pleas, a judge ordered the demurrer to be set aside as frivolous, and the plaintiff to be at liberty to sign judgment. The plaintiff entered up judgment accordingly, and proceeded to trial with the other issues, on motion to set aside the judges' order, trial, and subsequent proceedings: *Held*, first, that as the rule did not ask to set aside the issue, there was no irregularity in the trial. Secondly, that the judgment signed was irregular, and that the plaintiff should have applied to a judge to strike out the plea. (*Alderson, B. dissentiente.*) *Talbot v. Bulkley*, 33 L. O. 307.

GAME.

Offences in respect of—form of conviction.—Stat. 9 G. 4. c. 69, s. 1, gives a summary conviction, if any person "shall by night unlawfully enter or be in any land, whether open or inclosed, with any gun," &c. "for the purpose of taking or destroying game."

A conviction set forth that *C.* did, by night, "unlawfully enter certain inclosed land," "with a net, for the purpose of stealing game, to wit, partridges and pheasants, contrary to the form," &c.

Held bad, for not stating the intent to be to take game there. *Fletcher v. Calthrop*, 6 Q. B. 580.

Cases cited in the judgment: *Rex v. Marsh*, 2 B. & C. 717; *James v. Phelps*, 10 A. & E. 483; 3 P. & D. 231; *Reg. v. Croden*, 4 Burr. 2279; *Rex v. Gainer*, 7 C. & P. 231; *Reg. v. Davis*, 8 C. & P. 759; *Rex v. Baines*, 2 Ld. Raym. 1265, 1269.

GENERAL ISSUE.

A declaration stated, that before the making the promise hereinafter mentioned, the plaintiff had brought an action in the Exchequer against the defendant to recover a certain sum of money; that issues, in fact, had been joined between the parties, and notice of trial given; that in consideration that the plaintiff would forbear further proceedings until the 14th of December, the defendant promised to pay the money and costs upon that day; and that in the event of his not paying, a judge's order should be drawn up to secure payment. There was also a count on an account stated. Pleas: 1st, to the first count, that the plaintiff never had any cause of action in the action in the Exchequer, which he well knew; 2nd, to both counts, that the original action was brought on two cheques, and that the judge's order was made upon certain terms, (setting them forth,) that the promise in the first count mentioned was deduced from that order, and that the promise in the second count was deduced from the order ascertaining the amount of costs due on taxation, and that the order was afterwards set aside: *Held*, upon general demurrer, that

the former plea was good, and on special demurrer, that the second plea was bad, as amounting to the general issue.

Quere, if it had been objected on special demurrer, that the former plea did not show the defendant to be in a condition successfully to defend the action in the Exchequer, would the plea have been good?

Wade v. Simeon, 3 D. & L. 587; 27; S. C. 1 C. B. 610.

Cases cited in the judgment: *Tooley v. Windham*, Cro. Eliz. 206; *Atkinson v. Settree*, Willes, 482; *Longridge v. Dorville*, 5 B. & A. 117; *Smith v. Monteith*, 13 M. & W. 427; 2 D. & L. 358.

INSOLVENT.

1. *District court of bankruptcy.—Discharge under insolvent debtors' act.—Averments.—Statutory form.*—To a declaration by an indorsee against the acceptor of a bill, the latter pleaded that, not being a trader within the bankrupt laws, and having resided twelve calendar months within the Birmingham district, he, after the bill became due, and before the commencement of the suit, duly petitioned the district court of bankruptcy for protection from process, under the 5 and 6 Vict. c. 116; that such proceedings were, had upon the said petition, that a final order was made by a commissioner duly authorized, for the protection of the person of the defendant from process, and for the vesting of his estate and effects in an official assignee; and that no assignee was chosen by the creditors of the defendant, or by any of them; whereby, and by force of the said order, the defendant was discharged from the bill and the cause of action in the declaration mentioned, verification: *Held*, on special demurrer, that this was not a good plea under the 4th section of the statute, inasmuch as it did not aver all the facts necessary to show the requisites of the section to have been complied with; nor (dissentiente, *Erle*, J., et dubitante, *Maule*, J.) within the 10th section, the form prescribed by that section not having been strictly followed.

Held, also, that the plea properly concluded with a verification: *Semble*, per *Maule*, J., that the adoption of the short form of plea given by the 10th section is not imperatively required. *Gillon v. Deare*, 2 C. B. 309.

2. A plea of discharge under 5 and 6 Vict. c. 116, s. 10, ought to show that the final order was for "distribution" as well as protection, *Erle*, J. dissentiente.

But *semble*, that if it disclosed a compliance with the provisions of section 4, it would be sufficient. The plea should conclude with a verification. *Gillon v. Deare*, 3 D. & L. 412.

ISSUABLE PLEA.

1. *Set off.—Waiver.*—Where a defendant is under terms of pleading issuably, and one of the pleas is a set-off, obtaining an order for particulars of the set-off is a waiver of the objection that the pleas are not issuable.

Scott v. Watson, 3 D. & L. 208.

2. To a declaration in assumpsit for money

lent, money paid, and money due on an account stated, the defendant, who was under terms to plead issuably, pleaded, amongst other pleas, as to, &c., parcel, &c., accord and satisfaction, by an agreement by the plaintiff to give time, in consideration of the defendant's undertaking to pay 4s. a week for interest until repayment of the principal, and to repay the principal as soon as his means would enable him, with an averment that the said rate of interest was different from and exceeded 5l. per cent. The plaintiff having signed judgment, as for want of a plea: *Held*, that the plea was an issuable plea within the terms of pleading issuably.

The declaration contained a count on a bill of exchange. The defendant paid money into court thereon, and pleaded to the residue of declaration as above. The plaintiff having accepted the money out of court: *Held*, on its being objected that such acceptance was a waiver of the objection to other pleas as non-issuable, that it was no such waiver. *Verbist v. De Keyser*, 3 D. & L. 392.

ISSUES OF FACT.

Entering up final judgment.—After judgment has been given in favour of the defendant, on demurrer to pleas which go to the whole cause of action, and issues in fact remain to be disposed of, the court will not compel the defendant to enter up final judgment on the record.

Semble, that where the issues are immaterial, and could in no possible event make any difference, the court will dispense with the trial of them. *Hinton v. Ackrman*, 33 L. O. 94.

JUDGMENT, NON OBSTANTE VEREDICTO.

Repleader.—Defendant in an action pleaded several pleas in bar, to one of which (extending to the whole cause of action) plaintiff demurred; on the others issues of fact were taken. Defendant had judgment on the demurrer, the court holding the declaration bad. The issues in fact were tried, and found for the plaintiff, except one (extending to the whole cause of action) which was found for the defendant, and was immaterial. Plaintiff, to avoid paying costs on this issue, moved for judgment thereon, non obstante veredicto, or for a repleader.

Held, that judgment non obstante veredicto could not be awarded, as it would be inconsistent with the judgment already given, that the plaintiff should not recover.

And that a repleader could not be awarded, as the parties must, in that case, be ordered to replead from the plea downwards, and such direction would lead to an absurdity on the record, since the court had already held the declaration bad. *Willoughby v. Willoughby*, 6 Q. B. 722.

And see *Ambiguity*.

JUSTIFICATION.

Trespass.—Ca. sa. set aside by Judge's order.—In trespass for assault and false imprisonment, the defendant justified under a judgment and writ of *ca. sa.* issued at his suit against the

plaintiff. Replication, that the judgment was not a judgment signed in any action, but under colour of a document purporting to be a warrant of attorney; that, after the issuing of the *ca. sa.*, a judge ordered the judgment and writ to be set aside; that the order was afterwards, to wit, on, &c. made a rule of court; and that the judgment and writ were so set aside on the ground that the warrant of attorney was never delivered as a complete authority to do the acts therein specified, but, as an escrow, to take effect in a certain event, which never happened, and was to be kept by the plaintiff in his own possession till such event should happen; and that the defendant, by an improper and fraudulent contrivance, obtained and kept possession of it against the plaintiff's will; that the judgment was signed under colour of the said document, and the *ca. sa.* issued thereon, without the plaintiff's consent: *Held*, on demurrer, that the replication was good: 1st, that it was not necessary it should show that the judgment was set aside for *irregularity*, inasmuch as it sufficiently showed that it was set aside as having been signed against good faith; 2ndly, that it was not necessary to state that the judge's order was made a rule of court before the commencement of this suit, inasmuch as a judge at chambers had authority to set aside the judgment and writ; and, 3rdly, that this was not a case in which the plaintiff ought to have replied *nul tiel record*. *Brown v. Jones*, 15 M. & W. 191.

LIMITATIONS, STATUTE OF.

Plea to debt on bond.—Debt on bond. The defendant, after craving oyer of the bond and condition, which was for payment of money pursuant to the covenant in an indenture of even date with the bond, and for performance of the covenants, &c. contained therein on the part of the obligors, pleaded that no cause of return in respect of the said writing obligatory, by reason of any breach of the said condition, or of the covenants, &c. in the said indenture contained, had accrued at any time within twenty years next before the commencement of the suit: *Held*, that the plea was bad, 1st, for not setting out the indenture, as it might contain impossible covenants, in which case the bond would be single, and the plea to the breaches only would be bad; 2ndly, in not properly confessing a breach of the condition.

Semble, the proper form of plea would have been, to set out the indenture; to aver performance of all that was performed within twenty years; to admit the breaches beyond twenty years; and to those breaches to plead the Statute of Limitations. *Sanders v. Coward*, 15 M. & W. 48.

MISJOINDER.

1. *Counts in debt.*—A declaration commencing and concluding in the form of a declaration in debt, contained counts on bills of exchange by indorsee against indorser, in the form given by the rule of T. T. 1 W. 4, and also in debatus counts in debt: *Held*, not a misjoinder. *Edaile v. Maclean*, 15 M. & W. 277.

2. In assumpsit, the first count of the declaration alleged that F. was indebted to the plaintiff, as executrix, in 350*l.*, secured on mortgage; that the plaintiff, as executrix, had commenced proceedings at law against F., which were pending, and had been put to divers costs in such proceedings, &c.; and thereupon, in consideration of the premises, and that the plaintiff would stay the proceedings against F. for twenty-one days, the defendant undertook and promised the plaintiff, that, within the twenty-one days, he would pay the 350*l.* and the plaintiff's costs. Averment, that the plaintiff did stay the proceedings accordingly, and breach in non-payment by the defendant to the plaintiff of the mortgage-money, and costs. The second count was upon an account stated with the plaintiff as executrix: *Held*, a misjoinder. *Webb v. Cowdell*, 14 M. & W. 821.

MARRIAGE.

1. A declaration alleged, that in consideration that the plaintiff promised to marry the defendant, the defendant promised to marry the plaintiff; that the plaintiff has always been ready and willing to marry him; yet the defendant, not regarding his promise, married another woman.

Plea, that the defendant was not requested by plaintiff to marry her: *Held*, on special demurrer, that the plea was bad, and the declaration good, although the latter contained no averment that a reasonable time had elapsed. *Caines v. Smith*, 3 D. & L. 462.

2. *Breach of promise.*—Declaration in assumpsit for breach of promise of marriage, stated, that the defendant promised the plaintiff to marry her; that the plaintiff remained and still is sole and unmarried, and during all the time aforesaid, was ready and willing to marry the defendant, of which he already had notice; yet the defendant disregarded his promise, and wrongfully married another woman. Plea, that the defendant was not, at any time before the commencement of the suit, requested by the plaintiff to marry her: *Held*, 1st, that the plea was bad on special demurrer; 2ndly, that the declaration was good on general demurrer, without an averment of the lapse of a reasonable time. *Caines v. Smith*, 15 M. & W. 189.

MUTUAL PROMISES.

Debt.—The declaration stated, that an action had been brought by the plaintiff, as assignee of an insolvent, to recover 1,000*l.* due to the insolvent; that all monies in difference in the action and between the parties were referred to arbitration, and thereupon, in consideration of the plaintiff then agreeing to perform the award on his behalf, the defendant agreed to perform the award on his behalf; that the arbitrator awarded that the plaintiff was entitled to recover from the defendant the sum of 372*l.* 3*s.*, and stated, that in finding that sum to be due to the plaintiff, he had allowed for all and singular the sums which were ever paid to the insolvent before he became such insolvent. The declaration then averred that the defendant had not

paid the sum awarded : *Held*, that the amount of mutual promises made it an action of debt on a promise to perform the award when made, and not an action of debt on the award itself, and that the declaration was therefore bad. *Sutcliffe v. Brooke*, 14 M. & W. 855, S. C. 3 D. & L. 302 ; 32 L. O. 612.

NON-ASSUMPSIT.

See *Consideration*.

PARTNERSHIP.

In an action for money *l*ad and received by several plaintiffs, the defendants pleaded, that before receiving the money the plaintiffs were in partnership, and that G., one of the partners, with the privity of the other employed the defendants as auctioneers to put up to sale certain partnership property of the plaintiffs, which the defendants agreed to do ; that at the time of such employment and sale, the defendants believed G. to be the sole owner of the said property, and that they had no notice that the other plaintiffs had any interest therein ; that the defendants sold the goods for the sums of money in the declaration mentioned ; and that after such employment, G. became indebted to the defendants for work and labour, &c., which debt was alleged by way of set-off : *Held*, on demurrer, that the plea was bad, as there was nothing to show that the partner appeared as the sole owner with the consent or by the default of the other partners ; it was therefore only an attempt to set off a debt due from one partner against a debt due to all. *Gordon v. Ellis*, 3 D. & L. 803.

PAYMENT, PLEA OF.

1. A plea of payment by one of several makers of a joint and several promissory note, is supported by proving a payment of the note by one of his co-makers. Payment and acceptance of the amount of a promissory note after it becomes due, and when the holder is entitled to nominal damages, support a plea of payment and acceptance in discharge of the debt and damages ; consequently the holder, after such payment and acceptance, cannot maintain an action for such nominal damages. *Beaumont v. Greathead*, 3 D. & L. 631.

2. *Damages.—Debt.*—To debt for work and labour, &c., the defendant pleaded that he paid to the plaintiff divers sums in satisfaction and discharge of the "causes of action" in the declaration mentioned. *Held*, that the term "causes of action" meant both debt and damages, and that a judgment signed for the latter was irregular. *Triston and another v. Barrington*, 33 L. O. 21.

PAYMENT INTO COURT.

1. In an action of trespass for breaking and entering the plaintiff's dwelling-house, and seizing and laying hold of the plaintiff, the defendant paid money into court. The plaintiff replied, damages *ultra*, upon which issue was joined, and a verdict found for defendant. On motion for judgment, *non obstante veredicto* : *Held*, that the plea was good, inasmuch as by

certain statutes, justices and officers of the excise and customs are enabled to pay money into court in actions for trespass to the person ; and that the plea need not state the particular character which they fill. *Aston v. Perkes*, 3 D. & L. 655.

2. In an action of debt, where money is paid into court as to part of the debt only, the plea given by the rule of Trin. Term, 1 Vict., is insufficient ; it should be so framed as to answer the damages as well as the debt. *Lowe v. Steele*, 3 D. & L. 662.

PENALTY.

See *Debt*.

PENDENCY OF FORMER SUIT.

The defendant pleaded, that an action had already been brought by the plaintiff against the defendant and his partners before the execution of the bond, to recover the debt in the condition mentioned, that that action was still pending, and that the present action was not commenced until after the execution of the bond : *Held* bad.

Held, also, that the bankruptcy and certificate of the defendant and his partners after the commencement of the action in which the judgment was obtained, but before judgment, furnished no answer to an action upon the bond ; the demand arising thereon not being a debt, (contingent or otherwise,) provable under the fiat, by virtue of any of the provisions of the 6 G. 4, c. 16. *Hinton v. Acrawan*, 2 C. B. 367, S. C. ; 33 L. O. 94.

Cases cited in the judgment : *Jameson v. Campbell*, 5 B. & Ald. 250 ; *Ex parte Barker*, 9 Ves. 110 ; *Ex parte Marshall*, 1 Mount. & Ayr. 145 ; *Abbott v. Hicks*, 5 N. C. 578 ; 7 Scott, 733.

PLEA TO PART.

Professing to answer the whole cause of action.—To a count in trover for converting cattle and goods, to wit, beasts of the plough, implements of husbandry, books, bedsteads, &c., the defendant pleaded a justification of the seizure as a distress for rent. The plaintiff replied, that he was a husbandman, and that the goods mentioned in the count were beasts of the plough and implements of husbandry, there being no other available distress upon the premises at the time : *Held*, bad, on special demurrer, inasmuch as it professed to answer the whole of the plea, which plea embraced all the articles enumerated (under a *vide licet*) in the count, some of which were not implements of husbandry. *Davies v. Aston*, 1 C. B. 746.

PRESCRIPTION ACT.

Implied colour.—In case, the declaration stated, that the plaintiff was lawfully possessed of a mill, and by reason thereof of right ought to have and enjoy the benefit of a watercourse which ran and flowed, by means of a weir therein erected, a little above the plaintiff's mill, being kept at a certain height, unto the said mill of the plaintiff, for supplying it with water for the working thereof ; and complained, that the defendant wrongfully pulled down the weir,

and placed and kept it at a lower height than it ought to have been.

The defendant pleaded, that, before and at the times when, &c., he was the occupier of a certain close adjoining the water-course, and that he and all others the occupiers for the time being of the said close for twenty years next before the commencement of the suit, enjoyed, as of right and without interruption, the right of from time to time, as occasion required, removing a part of the weir, and placing and keeping it at a lower height than the rest, to such an extent and for such a time as was necessary for diverting enough of the water to irrigate the said close; that, at the times when, &c., irrigation was necessary for the close, wherefore the defendant removed the said part of the weir, and placed and kept it at such lower height, to such an extent and for such a time as, and no more or longer than was necessary for diverting the water for the irrigation of the said close: *quæ sunt eadem*, &c.

Held, that this plea was good; that it was not an argumentative traverse of the right alleged in the declaration, inasmuch as it set up a right which, under the stat. 2 & 3 W. 4, c. 71, was not complete until the commencement of the suit, and therefore was not inconsistent with the plaintiff's right to have the weir at a greater height at the time of the act complained of. *Ward v. Robins*, 15 M. & W. 237.

Cases cited in the judgment: *Wright v. Williams* 1 M. & W. 77; *Richards v. Fry*, 3 Nev. & P. 67.

PROPERTY TAX ACT.

To covenant for rent under an indenture, the defendant pleaded, as to 2l. 0s. 10d., that on the 5th April, 1843, before any part of the rent became due, 2l. 0s. 10d., being at the rate of 7d. for every 20s. of the annual value, was duly, and according to the form of the statute, assessed on the premises, in respect of the property thereof, for the year ensuing; that, on the 28th August, 1844, before the commencement of the suit, the defendant, then being occupier and tenant, paid to T. C., then being collector, the 2l. 0s. 10d.; and that the defendant had never made any payment on account of the rent since the payment of the 2l. 0s. 10d.: *Held*, on general demurrer, that the plea sufficiently showed that the assessment was made under the Property and Income Tax Act, 5 & 6 Vict. c. 35, and that it answered that part of the demand to which it was pleaded.

The defendant also pleaded, in bar of the further maintenance of action, as to 52l. 10s., other parcel of the rent, that the plaintiff held the premises on lease from A., subject to a proviso for re-entry by A. for breach of covenant; that on the 1st of January, 1844, before any part of that rent became due, the plaintiff incurred a forfeiture by breach of covenant; that, in consequence of such forfeiture, A. recovered in ejectment against the plaintiff; and the defendant afterwards paid A. 52l. 10s. for the profits from the day of the demise in the declaration, (1st of Jan., 1844): *Held*, that the plea disclosed a substantial answer as to the

52l. 10s., argumentativeness not being pointed out as a ground of demurrer. *Franklin v. Carter*, 1 C. B. 750.

PUBLIC OFFICER.

Bank.—A declaration in debt by the public officer of a banking company, described the plaintiff as "one of the registered public officers for the time being, of, &c., who now sues as such public officer as aforesaid," &c., and stated that the defendant had by the writ been summoned to answer the plaintiff as such public officer: *Held*, on special demurrer, that it sufficiently showed the plaintiff to have been the public officer at the time of the commencement of the action. *Esdaile v. Maclean*, 15 M. & W. 277.

See *Several Pleas*, 2.

PUIS DARREIN CONTINUANCE.

A plea *puis darrein continuance*, if pleaded during the sitting at which the cause is set down for trial, should be pleaded on the day of trial in court, and be delivered to the judge to be certified by him and be annexed to the record, and should not be merely delivered to the plaintiff's attorney as an ordinary plea; and where such a plea was delivered to the plaintiff's attorney at the sittings for which the cause was set down for trial, and the plaintiff took no notice of it, but proceeded to try the cause upon the issue already joined, and obtained a verdict, (the defendant not appearing,) the court held that he was right in so doing, and refused to set aside the trial. *Payne v. Shenstone, administratrix*, 33 L. O. 166.

RAILWAY.

1. Assumpsit for not delivering within a reasonable time, certain railway shares. The plaintiffs averred that they had been "always from the said time of making the said agreement and promise, ready and willing to accept the transfer of the said interest and shares." The defendant pleaded "that the plaintiffs were not always from the time of making of the said agreement and promise in the declaration mentioned, ready and willing to accept the transfer of the said interest and shares:" *Held*, that the plea was too large a traverse, and therefore bad. *Tempest v. Kilner*, 3 D. & L. 407.

2. Time, when divisible.—*Contract for sale of shares*.—In assumpsit for the non-delivery of railway shares, pursuant to a contract, the declaration alleged that "the plaintiffs had always, from the time of the making of the agreement, been ready and willing to accept the transfer of the shares," and that, "although the plaintiffs, after the lapse of a reasonable time for the transfer, requested the defendant to transfer the shares, and tendered and offered to pay for the same," &c., the defendant did not transfer, &c. The defendant pleaded that the plaintiffs were not always from the time of the making of the agreement ready and willing to accept the transfer, &c.: *Held*, on special demurrer, that the traverse was too large, the allegation of the time in the declaration being divisible. A contract for the sale of railway shares may be the subject of an action at law. *Tempest v. Kilner*, 2 C. B. 303.

3. In an action by the provisional committee of a railway company, the court will not set aside a plea of *release puis darrein continuance* by one of the plaintiffs, if the releasor has any interest in the concern, however small; unless a clear case of fraud be made out. *Rawstone v. Gandell*, 3 D. & L. 682.

REJOINDER.

When traverse too large.—Debt by the payee against the makers of a promissory note, dated the 15th of April, 1843, for the payment of 145*l.* 4*s.*, on or before the 15th of April, 1845. Plea, that, by the said note, at the time of the making, the defendants promised to pay the sum therein mentioned, without specifying any time for the payment; that, after the note was made and issued, and was complete and delivered to the plaintiff, the note was, by the defendant's consent, but without the same being re-stamped, altered by the plaintiff in a material point, by making the same to be payable on or before the 15th of April, 1845, and by the insertion of the words, "and to be paid on or before the 15th of April, 1845." Replication, that, before and at the time of making, issuing, completing, and delivering the note to the plaintiff, and before the said alteration was made, it was meant and intended by the plaintiff and the defendants, that the note should be payable on or before the 15th of April, 1845, and that the words so inserted in the note should be inserted therein; but by the mistake of the plaintiff and the defendants the note was made and issued, and was complete and delivered to the plaintiff without specifying any time of payment; that the alteration was made with the intent and purpose of correcting the mistake, and making the note payable, according to the intention of the plaintiff and the defendants, within a reasonable time, and before negotiation. Rejoinder, that, before and at the time of the making, issuing, and completing of the note, and before the alteration, it was not intended by the plaintiff and the defendants that the note should be made payable on or before the 15th of April, 1845.

Held, on special demurrer, 1st, that the rejoinder was bad, as taking too large a traverse, by putting in issue the meaning of the parties *before* as well as *at* the time of making the note; 2ndly, that the plea was no answer to the declaration, inasmuch as the Stamp Laws authorise the stamping of certain kinds of notes *before* the *trial*, and the plea did not show that this was not one of those cases.

Seem, that the replication was bad in not showing that the promissory note was not originally binding upon the parties *before* the alteration. *Bradley v. Bardsley*, 14 M. & W. 873, S. C. 3 D. & L. 476.

REPLEADER.

See *Judgment non obstante veredicto*.

REPLICATION.

1. *De injura.*—In an action on several bills of exchange against the defendant as occu-

pier, the defendant pleaded, that they were accommodation bills, and that the plaintiff was a holder without value. *Replication de injuria*. After issue joined the defendant struck out the similitur and demurred to the replication; the demurrer was afterwards struck out by a judge at chambers as frivolous, the case went down to trial, and a verdict was found for the plaintiff. On application to set aside the order of the learned judge and all subsequent proceedings, on the ground that the replication was bad; the court held that the replication was good, and that they would not interfere with the discretion exercised by the judge at chambers. *La Forest v. Wall*, 33 L. O. 19.

2. *When insufficient.*—In an action of debt for goods sold, money lent, &c., the defendant pleaded, that, after the accruing of the cause of action, and before the commencement of the suit, the plaintiff had petitioned the Court for the Relief of Insolvent Debtors, under 1 & 2 Vict. c. 110, and that, by virtue of an order of that court, all his rights and property had, before the commencement of the suit, become vested in the provisional assignee. Replication, that, after the vesting order was made, the plaintiff's petition was dismissed by the said court, and he was discharged from custody without taking the benefit of the act: *Held*, that the replication was bad, inasmuch as the dismissal of the petition must be taken to have been since the action was commenced, and could not give any title to sue when none existed at the time the action was brought. *Yorston v. Fether*, 14 M. & W. 851, S. C. 3 D. & L. 297; 32 L. O. 612.

RETAINER.

See *Attorney*.

SCI. FA.

See *Banking Company*.

SEVERAL PLEAS.

1. To an action for a libel in a newspaper, the defendant cannot plead not guilty to the whole declaration, together with a plea of apology and payment of money into court, as to part, under the 6 & 7 Vict. c. 96. *O'Brien v. Clement*, 3 D. & L. 676.

2. *Public officer.*—In an action against the public officer of a joint-stock bank, the court will allow the defendant to plead that he is not a public officer, together with *non assumpsit*, unless the plaintiff gives an undertaking not to sue out execution against the defendant personally. *Holham v. Johnson*, P. O., 33 L. O. 307.

SOLVIT POST DIEM.

The defendant pleaded, that payment of the second half-yearly payment was not demanded by the plaintiff on the day it became due, or at any time within twenty-eight days after, but that the defendant, after the twenty-eight days, and before the commencement of the action, paid the same to the plaintiff, who accepted it in satisfaction, &c.: *Held*, on special demurrer, that this was not a good plea

of *solvit post diem*, within the 4 Anne, c. 16, s. 12. *Marriage v. Marriage*, 1 C. B. 761.

* Case cited in the judgment: *Hodgkinson v. Wyatt*, 1 D. & L. 668.

TRAVERSE.

See *Rejoinder*.

TRESPASS.

See *Justification*.

VARIANCE.

Assumpsit.—The declaration stated, that, in consideration that the plaintiff, at the request of the defendant, would sell and deliver to S., on credit, goods of the price to an extent not exceeding 100*l.*, the defendant promised the plaintiffs, that if S. did not pay for the same, she would do so on receiving three months' notice requiring payment. At the trial the following guarantee was proved:—"In consideration of your supplying S. with goods to the extent of 100*l.*, I undertake to pay you for the same if he does not, on receiving three months' notice."

Semble, that there was no variance between the declaration and the guarantee proved; but, assuming the true construction of the guarantee to be, that the defendant was not to be liable until 100*l.* worth of goods had been supplied, the declaration might be amended accordingly. *Dimmock v. Sturla*, 14 M. & W. 758.

See *Consideration*, 2.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Butchart v. Dresser. Feb. 27, and March 10, 1847.

SUIT AGAINST JOINT-STOCK BANKING COMPANY, (7 GEO. 4, c. 46).—SUBSTITUTION OF NEWLY-APPOINTED REGISTERED PUBLIC OFFICER.

In a suit against a joint-stock banking company constituted under 7 Geo. 4, c. 46, the plaintiff is not required to obtain an order, or to file a supplemental bill for the purpose of bringing before the court a registered public officer appointed subsequently to the filing of the original bill.

Semble, That it is irregular, after notice of such substitution, to serve the original public officer with notice of motion to produce documents belonging to the company.

Mr. Rolt said, that this was an appeal by the plaintiff from the Vice-Chancellor of England, who had refused his motion for the production of documents under the following circumstances. A bill was filed against the Yorkshire Banking company in the name of the defendant Dresser as its then registered public officer. The latter stated in his answer, that one Scott

had been since substituted for him as such officer; and in reference to the interrogatory respecting the production of papers, &c., expressed his willingness to produce them with the consent and permission of the company. The plaintiff then moved that Dresser or Scott might be ordered to produce them, but his Honour refused the motion upon the grounds, as it was stated, that the first was no longer such officer, and that the second was not before the court, intimating that the latter objection might be obviated by a short supplemental bill.

Mr. Rolt submitted that such a course was unnecessary. It was expressly enacted by 7 Geo. 4, c. 46, that a suit should not abate or be prejudiced by the death, removal, &c., of the public officer, and he referred to sections 4, 5, 6, & 9. Such a proceeding was not adopted in the case of corporations, churchwardens, or overseers, where a notification on the record was all that was required.

Mr. Bagshawe followed on the same side, and urged that the company was the substantial, and its officer merely the nominal, defendant. In an action at law under similar circumstances, it was only requisite to enter the name of the new officer on the margin of the record.

Mr. Stuart was proceeding to support the Vice-Chancellor's order, when it was represented that the question had arisen at the Rolls in the matter of the Manchester Bank. The case was therefore ordered to stand over until the following seal day for the purpose of referring to that case.

10th March. Mr. Bacon, for Scott, the newly-appointed officer who had been served with a notice of motion, argued that a supplemental bill, as suggested by the court below, was necessary.

Mr. Stuart and Mr. Tillotson, for Dresser, contended that he had been irregularly served with notice after he had ceased to be the public officer of the company, and that he was consequently entitled to his costs in this motion. They mentioned, that in the case of *Lord Mostyn v. Burdekin*, in the matter of the Manchester Bank above referred to, the Master of the Rolls had made an order to carry on the proceedings in the name of the new officer.

Mr. Rolt having briefly replied, The Lord-Chancellor said, that he should make the order for the production of the papers, &c., but should not make any order for the substitution of the new officer, as it was not at all necessary. The defendant, Dresser, must have his costs of this motion, but without prejudice to the plaintiff in respect of them as against the company. The bill had been regularly filed, and it was improper not to communicate to the plaintiff at once the fact that the defendant had ceased to be the public officer. It might or it might not have been strictly regular to serve the latter with the notice of this motion, but having chosen to put in an answer, he could not complain of the result.

Rolls Court.*In re Hare.***TAXATION OF BILL.—CONSTRUCTION OF 6 & 7 VICT. C. 73, s. 37.**

Where three parties are jointly liable to a bill of costs, and a judgment is obtained for the amount in an action against one, the other two are not precluded by such judgment from obtaining an order to tax.

THE petition in this case was presented to tax the bill of costs of Mr. Hare, who had acted as the solicitor of three parties, named John, Joseph, and William Cox, in relation to various matters in which they were engaged as partners, and also for William in matters conducted on his own private account. The bill was made out and delivered to the three, Mr. Hare insisting that the business done for William was done on the retainer of the other two. The bill not having been paid, an action was brought against the three for recovery of the amount, and judgment was obtained against William by default, whereupon John and Joseph presented the present petition, admitting their liability to the charges relating to the particular transaction, but disputing the alleged retainer for the costs charged against William personally.

Mr. *Kindersley* and Mr. *Hitchcock*, for the petition, submitted, that in order to render a third party liable for costs the retainer must be clearly proved, and that at all events the right to have the bill taxed was indisputable.

Mr. *S. Smith*, contra, urged that the judgment obtained against William Cox was equal to a verdict against the three, and that two out of three parties jointly liable could not obtain an order for taxation, unless they admitted their liability to pay the whole bill.

The *Master of the Rolls* said, he was of opinion the bill was taxable, and that the judgment against William did not deprive the others of a right to tax, and that with regard to the retainer, the Master was competent to decide the question, so that it was not necessary to have the question sent to law. His lordship ordered that William Cox should be served with a copy of the petition, and said, that if Mr. Hare wished it, the petitioners must confess judgment in the action at law, without prejudice to the question of retainer and right to taxation.

Vice-Chancellor Knight Bruce.*Sewell v. Godden.* Feb. 24, 1847.**APPEARANCE.—29TH ORDER, 1845.**

Where a subpoena had, by order of the court, been served upon the solicitor of a defendant out of the jurisdiction of the court, the plaintiff cannot, under 29th Order of May, 1845, obtain leave to enter his appearance.

THIS was a motion on behalf of the plaintiff, to enter an appearance for one of the defendants, who having answered the original bill and

entered his appearance, had gone out of the jurisdiction. On the bill being amended, the court made an order, that the subpoena to answer the amended bill should be served on the defendant's solicitors.

C. Barber, for the motion, referred to the 26th and 29th Orders of May, 1845.

Speed, for the solicitors of the defendant, referred the court to the case of the *Marquis of Hertford v. Suisse*, 9 Jurist, 1001.

The *Vice-Chancellor*, on the authority of that case, refused the motion.

Holroyd v. Wyatt. Feb. 26, 1847.**VENDOR AND PURCHASER.—PAYMENT OF PURCHASE MONEY.—INCOME TAX.**

Upon motion for payment of purchase money, with interest, into court, a deduction on account of the income tax was not allowed to be made part of the order.

Mr. *Pigott* made the usual motion on behalf of the purchaser, for leave to pay his purchase money and interest into court, the amount due for the income tax being first deducted.

Mr. *Spence* resisted the deduction of the amount due for the income tax, which the officers of the court had unanimously stated ought not to form any part of the order.

The *Vice-Chancellor* said he must decline making the order as prayed, with the deduction for the tax. The order, without this, might be taken.

Queen's Bench.

(Before the Four Judges.)

Poole v. Cowan. Hilary Term, 1847.**ASSUMPSIT.—MONEY HAD AND RECEIVED.**

Cattle belonging to A., imported into this country, died on the voyage, and were afterwards disposed of to B., a soap boiler, who was to make what he could of them, and, after deducting expenses, to render an account to A. An account was afterwards rendered, which was alleged to be fraudulent.

Held, that an action of indebitatus assumpsit for goods sold and delivered would lie for the balance due from B. to A., and it is for the jury to decide whether more was due to A. than what appeared on the face of the account given by B.

THIS was an action for money had and received to the use of the plaintiff. Plea *non assumpsit*, and payment of a sum of money into court. The case was tried before Lord Denman, C. J., in London, last July. The plaintiff was the owner of 26 oxen imported into this country, which, in consequence of the state of the weather, died on the voyage. When the vessel arrived in the Thames the carcasses of the oxen were disposed of by the plaintiff to the defendant, a soap boiler, for him to dispose

of them to the best advantage he could, and, after deducting expenses, to render an account to the plaintiff. It appeared in evidence, that the defendant disposed of the carcases, and rendered an account to the plaintiff, which was alleged to be fraudulent, and evidence was adduced to show that the defendant, after deducting all his reasonable expenses, had benefited to a greater extent than he stated in his account. Upon these facts, the learned judge left it for the jury to say, whether the defendant had received a net produce to a greater amount than the sum paid into court. Verdict for the plaintiff.

A rule nisi was obtained for a new trial on the ground of misdirection.

Mr. Crowder and Mr. Ball showed cause. The plaintiff is entitled to recover in this form of action. If the defendant, after the lapse of a reasonable time, refuses to account, or delivers a fraudulent account, it may be presumed he has received the money for the goods, which is money received to the use of the plaintiff. *Hunter v. Walsh*.^a

Mr. Whitehurst and Mr. Bramwell contra. The defendant would be liable to the plaintiff for not properly accounting for the proceeds of the sale, but he is not liable in this form of action. The agreement was for the price of the fat of the oxen, but the money proved to be received was for a manufactured article. It is said, in *Harvey v. Archbold*,^b that in an action for money had and received, the plaintiff must give evidence of a particular sum to which he is entitled. They cited *Nightingal v. Devisme*,^c *Scott v. Miller*,^d *Williams v. Vines*,^e *Bovill v. Hammond*.^f

Lord Denman, C. J. I think the case was properly left to the jury, and it is in accordance with all the cases cited, except the dictum of Lord Tenterden, in *Harvey v. Archbold*, "that the plaintiff ought to give evidence of the particular sum he was entitled to recover;" which, I think, was an observation not required to be made by the facts of that case. Here the defendant buys certain goods of the plaintiff, and is to render an account of the proceeds of the sale, and when he has done that, I think any balance in favour of the plaintiff is money had and received to the use of the plaintiff. It was evident the account was falsified in several particulars, and therefore it was for the jury to draw the inference as to what was due to the plaintiff in the best manner they possibly could.

Mr. Justice Patteson. The agreement here is, that the defendant should pay to the plaintiff the net produce of the sale of those animals, and it has been said that a special action for non-accounting is the proper remedy: but it being proved that there was a balance in the hands of the defendant, I think the question of amount was properly left to the jury.

Mr. Justice Coleridge. There appear to be

two questions,—first, had any money been received by the defendant, and secondly, what was the amount? An account was rendered, and the conduct of the parties rendered the matter beyond doubt that some money was received. Then, as to the amount, the plaintiff is not bound by the defendant's account, and if the jury are of opinion that more has been received than has been paid into court, I think the plaintiff is entitled to the verdict.

Mr. Justice Erle. I am of the same opinion. I think, upon these facts, that the defendant would be liable in an action for money had and received, and the amount was properly left to the jury.

Rule discharged.

Court of Exchequer.

Cobbett v. Oldfield. Hilary Term, Feb. 1, 1847.

AFFIDAVIT.—ADDITION.—JURAT.—COSTS.

When there is a defect in the jurat of an affidavit the court will discharge the rule with costs.

In an affidavit made by several deponents the name of one was written against the jurat, but it did not appear that he was the person making the affidavit. Held, insufficient.

An affidavit must contain the addition of each deponent.

THIS was a rule calling on the defendant to show cause why an attachment should not issue against him for having obstructed service of the process of the court.

White showed cause, and objected that the addition of one of the deponents who swore to the attempt to serve the writ, was not stated in the affidavit upon which the rule was obtained. He cited *Rex v. Justices of Carnarvon*, 5 N. & M. 481; Reg. Gen. H. T. 4 W. 4; T. T. 1 G. 4; 8 Price, 601; *Reg. v. Reeve*, 4 Q. B. rep. 211.

Pollock, C. B. The rule must be discharged, but without costs.

White then submitted that there was also an objection to the jurat, and upon that he was entitled to discharge the rule with costs. The objection was, that the name of one of the deponents was written opposite the jurat, but was not mentioned in it, nor was he in any way identified as one of the persons making the affidavit. *Frost v. Hayward*, 10 M. & W. 673; *Blackwell v. Allen*, 7 M. & W. 146.

Pashley, contra, submitted, that on mere technical objections the court would not discharge the rule with costs.

Pollock, C. B. We are bound by the authorities, and I must add that I do not regret that the court has come to that determination.

Parke, B. Attorneys blundered so often, that we said we would in future give costs, and we must keep to our word.

Rule discharged with costs.

Starkie, 224. ^b 3 Barn. & Cress. 626.
5 Burr. 2589. ^d 3 Bing. N. C. 811.
6 Q. B. R. 355. ^f 6 Barn. & Cress. 149.

CHANCERY SITTINGS.

Master of the Rolls.

AT WESTMINSTER.

Tuesday . . . April 13	} Remaining Petitions.
Wednesday . . . 14	
Thursday . . . 15	Motions.
Friday . . . 16	{ Petitions in the General Paper.
Saturday . . . 17	
Monday . . . 19	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday . . . 20	
Wednesday . . . 21	
Thursday . . . 22	Motions.
Friday . . . 23	{ Pleas, Demurrers, Causes, Fur. Directions and Ex- ceptions.
Saturday . . . 24	
Monday . . . 26	
Tuesday . . . 27	
Wednesday . . . 28	
Thursday . . . 29	Motions.
Friday . . . 30	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . . May 1	
Monday . . . 3	
Tuesday . . . 4	
Wednesday . . . 5	
Thursday . . . 6	{ Petitions in the General Paper.
Friday . . . 7	
Saturday . . . 7	Motions.

Short Causes, Consent Causes, and Consent Petitions every Saturday at the sitting of the court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

House of Lords.

NEW BILLS IN PROGRESS.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy, Abolishing Court of Review, and Reducing Number of Commissioners. (No. 2.) In Committee. Lord Brougham.

Markets and Fairs Clauses.—Public Undertakings Clauses.—Gas Works Clauses.—Waterworks Clauses.—Passed.

Indemnity. For 2nd reading.

Commons Inclosure, No 2. For 2nd reading.

The House will assemble on the 15th April, in the new building, her Majesty having assigned that portion of her palace for the use of their lordships.

House of Commons.

NEW BILLS IN PROGRESS.

City Small Debts Court. In Committee. Mr. Masterman.

Law of Railways. For 2nd reading. Mr. Strutt.

Agricultural Tenant-right. In Committee. Mr. Strutt.

Roman Catholics Relief. In Committee. Mr. Watson.

Pious and Charitable Property. For 2nd reading. Lord J. Manners.

Rating Small Tenements. For 2nd reading. Mr. Waddington.

For the Speedy Trial and Punishment of Juvenile Offenders. For 2nd reading. Sir John Pakington.

To Encourage Life Insurance. For 2nd reading. Mr. Godson.

Lunatic Asylums Regulation. Attorney-General.

Inclosure Act Amendment. Sir F. Thesiger.

Health of Towns. For 2nd reading. Lord Morpeth.

Towns Improvement Clauses. For 2nd reading.

This House will meet on the 12th April.

LEGAL OBITUARY.

1847, March 3.—Turner Prescott, of Manchester, Solicitor, aged 41.

March 9.—George Farren, jun., of Lincoln's Inn, Barrister-at-Law, aged 37. Called to the bar 29th Jan., 1836.

March 9.—C. S. Short, of the Clapham Road, Solicitor, aged 40.

March 14.—John Gross, of Ipswich, Solicitor, aged 41.

March 18.—William Ward, of Burslem, Staffordshire, Solicitor, aged 35.

March 19.—R. F. Hindle, of Preston, Solicitor, aged 31.

March 21.—William Fellowes, of Dudley, Worcestershire, Solicitor, aged 87, the father of the profession in that town, where he had practised for more than 50 years.

March 23.—John Ascroft, of Oldham, Lancashire, Solicitor.

March 25.—Henry Edmondes, of the Middle Temple, formerly Deputy Clerk of the Peace of the County of Middlesex, aged 39, called to the bar 24th April, 1840.

March 27.—T. Bailey, of Chester, Solicitor.

March 29.—William Lloyd Roberts, of Carnarvon, Solicitor, aged 51.

April 5.—Alexander Radclyffe Sidebottom, of Lincoln's Inn, Barrister-at-Law, aged 74, the eminent conveyancer.

THE EDITOR'S LETTER BOX.

"A Constant Reader" inquires, whether the officers of a friendly society, with the consent of a majority of the members, can legally invest the monies belonging to the society in the purchase of freehold property, the rents and profits thereof to be applied for the benefit of such society? And whether they can legally invest monies upon mortgage of real property, the interest to be applied for the benefit of the society? The rules of the society being silent thereon.

We are obliged to a "Young Subscriber" for the trouble he has taken, and will attend to the points he mentions.

Erratum.—County Court Judges, p. 522, ante, for Turner, read W. Furner.

The Legal Observer.

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 17, 1847.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

CONSTRUCTION OF THE COUNTY COURTS ACT.

WE continue to receive innumerable communications relating to the County Courts Act, and the construction to be put upon its unintelligible and discordant provisions. To the most urgent of the points mooted we propose occasionally to refer, even at the hazard of repeating some observations familiar to our readers.

As might have been anticipated, difficulties begin already to be felt in carrying the act into operation, and there is a universal feeling of uncertainty with respect to the cases falling within its enactments, which causes a partial suspension of proceedings for the recovery of debts under 20*l*. This effect, however, we apprehend will be of temporary duration. To say nothing of higher considerations, the emoluments of the judges and other officers belonging to the County Courts, depend upon the facilities and inducements afforded to suitors to prosecute their claims under the recent act, and we have no doubt every legitimate encouragement will be held out to plaintiffs to resort to the newly established tribunals. The superior courts of common law, on the other hand, have long since ceased to exhibit the jealousy formerly manifested upon any interference with, or attempted abridgement of, their jurisdiction. Indeed, on the contrary, the desire of the judges of the superior courts, for several years past, seems to have been, rather to rid themselves of the burthen of business, than to extend the limits of their jurisdiction. How this has happened we shall not stop now to inquire.

VOL. XXXIII. No. 997.

It has been already noticed,* that the late act contains no prohibitory clause—in other words—that it is not compulsory on a plaintiff to sue in the County Courts in any case in which he might have brought his action in the superior courts before the passing of the Act 9 & 10 Vict. c. 95. It follows, that a plaintiff, who now brings his action in one of the superior courts, for a debt or other cause of action cognizable by the County Court, runs no risk of being defeated, or met by a plea in bar to the jurisdiction of the superior court, or by a summary application to the court in which the action is brought to stay the proceedings. The only danger threatening a plaintiff, who prefers proceeding in one of the superior courts for a cause of action within the jurisdiction of the County Court is, that he recovers no costs. A successful plaintiff, suing in one of the superior courts for a cause of action cognizable in a County Court, is liable, in certain cases, and under certain circumstances, to have his judgment curtailed of the amount to which he was heretofore entitled, according to the statutes and the practice of the superior courts, for his costs and charges in the action. This is the utmost extent to which a successful plaintiff's interest can be compromised by continuing to sue in one of the superior courts; and he can in no case be called upon to pay the defendant's costs. He recovers the amount of his verdict precisely in the same manner as he did before the act of last session came into operation, and, as we have just intimated, there are a great variety of cases in which a plaintiff, suing in one of

Ante, vol. 32, p. 593.

B B

the superior courts, is still entitled to recover costs from the defendant, although the nature and amount of the claim might have entitled the plaintiff to proceed by plaint in the County Court.

The 128th section expressly enacts, that all actions which might have been brought in any of the superior courts before the passing of this act, may still be brought in the superior courts, where the plaintiff dwells more than twenty miles from the defendant, or where the cause of action did not arise wholly, or in some material point, within the jurisdiction of the court in which the defendant dwells or carries on his business at the time of the action brought, or where an officer of the County Court shall be a party.

We concur with some of our correspondents, that this section is pregnant with difficulties, and affords abundant materials for litigation. We are asked, if it is directory, or only permissive? if, in any of the events specified, the plaintiff *must* bring his action in the superior court, or *may* resort to the County Court, or to the Superior Court, at his option. The language of the statute is, that all such actions and proceedings may "be brought and determined in any such Superior Court, at the election of the party suing or proceeding, as if this act had not been passed;" and we cannot see how effect can be given to these words by any other construction than that which enables a plaintiff, in any of the three events contemplated, to proceed by action in one of the Superior Courts, or by plaint in the County Court, at his discretion. The defendant has no voice in the matter. If he means to resist the claim, he must be prepared to attend at Westminster, or at Whitechapel, or at any one of the three hundred places at which County Courts are to be holden throughout the kingdom, to which the plaintiff has thought fit to summon him. The plaintiff, as we understand the act, is at liberty in every case, whatever may be the nature or extent of his claim, to take upon himself the responsibility of suing in one of the Superior Courts, rather than in the County Court. Now, supposing the plaintiff to proceed in one of the Superior Courts, when he might and ought to have sued in a County Court, *how* and *when* is the defendant to question the exercise of the plaintiff's discretion in selecting the wrong tribunal? This is a point of obvious importance, on which the act of parliament and the rules of practice are alike silent.

The only portion of the statute which bears upon the question is, the 129th section, which enacts, that if any action shall be commenced in any of the Superior Courts, for any cause (other than those before specified in the 128th section,) for which a plaint might have been entered in the County Court, and a verdict shall be found for the plaintiff, for a sum less than 20*l.* in contract, or less than 5*l.* in tort, the plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless, in either case, the judge who tries the cause certifies, on the back of the record, that the action was fit to be brought in the Superior Court.

It appears to be as plain as anything in the act, the defendant can have no opportunity of showing that the plaintiff suing in the Superior Court selected the wrong tribunal, until the result of the trial is ascertained. Although no question should arise as to the plaintiff dwelling more than twenty miles from the defendant, or the cause of action arising wholly, or in some material point, within the jurisdiction in which the defendant dwells or carries on his business, still, until the cause has been tried, it is impossible to know whether the judge who tries it will consider it to be an action fit to be brought in the Superior Court. Let us assume, however, that the trial has taken place, and a verdict is found for the plaintiff, for less than 20*l.* in an action of contract, or less than 5*l.* in tort, and the judge who tried the cause refuses to certify that the action was fit to be brought in the Superior Court—what then? The plaintiff is still entitled, in any event, to recover the amount of his verdict, and he is entitled to his costs, as in ordinary cases, in any of the events specified in the 128th section. Should the application on the part of the defendant then be, to enter a suggestion to deprive the plaintiff of costs, or by motion to stay the proceedings, upon payment of the amount of the verdict, without costs; in either case, when must the application be made? Will it be in time after judgment has been signed, or after execution has issued? Is the defendant to show, in the first instance, that the plaintiff is not within any of the three exceptive provisions contained in the 128th section; or, is the plaintiff, in answer to the defendant's application, to show that the case falls within one of the causes spe-

cified in the 128th section, and that he was therefore justified in resorting to the Superior Court? If the plaintiff, by affidavit, establishes a *prima facie* case, showing himself to be within the exceptive provisions, is the defendant to be allowed to answer the plaintiff's affidavit? Again, supposing the plaintiff desires to establish, or the defendant to negative the allegation, that "the plaintiff dwells more than twenty miles from the defendant," to what period does the provision refer? Is it applicable to the time when the cause of action accrued, or to the time when the action is brought, or to the time when the affidavit is made? Or, suppose the plaintiff desires to prove, that "the cause of action did not arise wholly, or in some material point, within the jurisdiction of the court in which the defendant dwells or carries on business at the time of action brought," on what principle is the court to decide the materiality of points upon affidavit?

With respect to the provision, that "if the verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client" how is the court to ascertain, when the plaintiff fails to prove any cause of action, that the action was for a cause for which a plaintiff might have been entered in the County Court? A plaintiff brings an action for unliquidated damages; he fails to establish any right of action, and is nonsuited, or has a verdict against him; who can say what amount of damages he would have been entitled to, if he could have maintained his action? How is it possible to determine in such a case that the cause of action was one for which the plaintiff would have had an adequate remedy by plaint in the County Court?

We have not gone through a tithe of the questions which arise upon the construction of the two short sections to which we have referred. Before those doubtful points are disposed of, a fresh crop of difficulties will spring up, and we have no doubt points arising out of the County Courts Act, will furnish a very considerable addition to the ordinary business of the common law courts.

Meanwhile, the daily newspapers contain very imposing accounts of the opening of the new courts, especially in the metropolitan districts and the large towns. Mr. Starkie commenced in the Clerkenwell district with an entry of 147 plaintiffs; Mr. Sergeant Manning, at the Tower Hamlets, with 146 plaintiffs; Mr. Lowndes,

at Liverpool with 105 plaintiffs; and Mr. Moylan, in Westminster, with 83 plaintiffs. Some of the new judges have appointed separate clerks for each court town, whilst others have appointed a single clerk for the district, leaving it to him to nominate assistants. It has been stated that Arthur John Landor, Esq., a barrister of nearly seven years' standing, has undertaken the office of High Bailiff in the Norfolk district! Whether this should be considered *infra dig.* by the bar we shall not take upon us to determine.

SALE BY AUCTION WHEN VOID BY THE VENDOR EMPLOYING A PUFFER.

THE distinction which exists at law and in equity, when the vendor employs a person to bid at a sale by auction, was carefully examined, and accurately defined, in a case in the Court of Exchequer, which has recently been reported.^b

In the case referred to, an action was brought against the auctioneer, to recover back the deposit paid upon the sale of certain leasehold premises. The auctioneer announced that the sale was to be "without reserve," but it appeared that an agent of the vendors employed a person, who attended and bid to enhance the price.

On the part of the defendant it was contended, that there was a well-established rule in equity, that one person may be employed by the vendor as a bidder to protect the property from going below its real value, and that the same rule ought to prevail at law. On the other hand, it was insisted that at law *any* secret bidding on behalf of the seller is a fraud and imposition on the purchaser, and avoids the contract.

Baron *Parke*, in his judgment, observed, that it did appear from the cases decided in equity,^c that the employment by the vendor of *one* person to bid, in order to protect the property, was not fraud, although the fact might not be notified to the purchaser. In law it was otherwise; Lords *Mansfield*, *Kenyon*, and *Tenterden* had all held, that where a seller employs a bidder, the fact ought to be notified to the public.^d Law and equity were agreed in

^b *Thomett v. Haines*, 15 M. & W. 367.

^c *Bramley v. Alt*, 3 Ves. 619; *Woodward v. Miller*, 2 Coll. 279; *Meadows v. Tanner*, 5 Madd. 34.

^d *Howard v. Castle*, 6 T. R. 612; *Wheeler v. Collier*, Moo. & Mal. 123.

this, that if more than one person be employed to bid, it amounts to fraud, as the employment of more than one cannot be necessary for the protection of the property, and must only be to enhance the price. The courts of law and equity also agreed in holding, that where it is announced the sale is to be "without reserve," if a person be employed to bid, the sale is vitiated, inasmuch as the vendor adopts the step he had undertaken not to take. It was not necessary in the present case, therefore, to decide that a sale would be invalid if the vendor employed a person to buy the property in. It was enough to say, that at a sale announced to be "without reserve" a person was employed to puff.

The other barons, in concurrence with these views, decided that the sale was void, and the plaintiff entitled to recover back his deposit.

STATUTE OF LIMITATIONS.

WHEN BARRED BY ACTION IN ANOTHER COURT.

A DEMURRER was argued before Mr. Justice Wightman and Mr. Justice Cresswell, the judges who went the last Northern Circuit. Mr. Unthank appeared for the plaintiffs, Mr. Addison for defendant, on the 20th November, 1846, at Sergeant's Inn Hall. The judgment was given by Mr. Justice Wightman, at his Chambers in Rolls Garden, on the 25th of Feb. 1847, as follows:—

"This was an action of assumpsit for money had and received, and upon an account stated, and was brought into the Court of Pleas at Durham.

"The defendant pleaded a set-off of a debt on simple contract, to which the plaintiff replied, that the debt in the plea mentioned did not accrue to the defendant within six years next before the commencement of that suit.

"The defendant rejoined by showing a writ of summons sued out of the Court of Queen's Bench in July, 1844, and continued regularly down to a time subsequent to the date of the plea, and averring that the writ of summons was issued for the recovery of the debt mentioned in the plea, and within six years from the time that it accrued.

"To this rejoinder there was a general demurrer, on the ground that the process of the Court of Queen's Bench was not available as an answer to a replication of the Statute of Limitations to a plea of set-off in an action in the Court of Pleas at Durham.

"By the Statute of Limitations, 21 Jac. 1, c. 16, s. 3, all actions upon the case, or of debt upon contract without specialty, are to be

brought within six years after the cause of such action, and not after.

"The terms of the statute do not apply to the subject matter of the action, but to the remedy. The debt exists, though more than six years have elapsed, and the remedy by action is gone.

"The plea of set-off is founded upon the 13th sect. of 2 Geo. 2, c. 22, 'that where there are mutual debts between the plaintiff and the defendant, one debt may be set off against the other.'

"The statute of set-off says nothing of mutual remedies, but speaks only of mutual debts, and construed literally, would enable a defendant to set-off a debt, although not recoverable by action. But it has always been considered that a debt to be set off must not only be completely due, but that it must be recoverable by action as well at the time of the commencement of the suit, as of the plea pleaded, and therefore a debt not recoverable by reason of the Statute of Limitations could not be set off if the statute were replied. *Remington v. Stevens*, 2 Stra. 1271; *Chapple v. Durston*, 1 Crompt. & Jerv. 1, and by the 9 G. 4, c. 14, s. 4, it is expressly enacted, that the Statute of Limitations, (21 Jac. 1, c. 16, s. 3,) and that act shall be taken to apply to the case of any debt or simple contract alleged by way of set-off either by plea, notice, or otherwise.

"The plaintiff in the present case has replied that the debt mentioned in the plea of set-off did not accrue within six years before the commencement of the suit in the Common Pleas at Durham—and that is true, but it did accrue within six years of a suit commenced in the Queen's Bench at Westminster, and pending at the time the plea was pleaded, as shown in the rejoinder.

"It was therefore a subsisting debt, and recoverable by action at the commencement of the suit, and when the plea was pleaded, and fulfils all the requisites of a debt to be set-off. It could not, it is true, be recovered by action in the Court of Common Pleas at Durham, but that we think is no valid objection to the right to set it off. In actions in many inferior courts debts may be set-off which could not have been recovered there by action; and if a debt under such circumstances as the present could not be set-off, a defendant might suffer a hardship which it was the object of the statute of set-off to prevent. A plaintiff residing abroad, and, if necessary, giving security for costs, might recover a demand against a defendant, in spite of a cross claim to a far greater amount, and which the defendant had endeavoured to enforce against the plaintiff by all the means in his power, but without effect, from the plaintiff's continued residence abroad.

"The present case is novel, but we see no sufficient reason to doubt the defendant's right to set-off the debt, which is recoverable in the Court of Queen's Bench, and our judgment, therefore, is for him upon this demurrer."

Hutchinson and another v. Lax

CHANCERY SALARIES AND COMPENSATIONS.

In stating the particulars of the annual return made by the Accountant-General of the Court of Chancery,* we noticed—1st, the payments made from "*The Suitors' Fund*," and 2ndly, those made from the "*Suitors' Fee Fund*," and thus laid before our readers the mode and means of defraying some of the salaries of the judges and of the officers of the Court of Chancery, and the compensation for abolished offices.

The compensations, including 5,155*l.* 10*s.* paid to the late officers of the Court of Exchequer, amount to upwards of 57,000*l.* a year. The total of the payments for salaries and compensations from the Suitors' Fund being annually 71,548*l.* 4*s.* 5*d.*; the total of those from the Fee Fund 136,177*l.* 10*s.* 3*d.*; together amounting to 207,725*l.* 14*s.* 8*d.*

The salaries of the Master of the Rolls, and of the Vice-Chancellor of England, are properly paid out of the Consolidated Fund. The Lord Chancellor's emoluments formerly consisted entirely of fees, many of which were abolished, and by the 2 & 3 W. 4 c. 122, (intituled "An Act for making provision for the Lord High Chancellor of England, in lieu of Fees heretofore received by him,") 10,000*l.* a year was directed to be paid to his lordship as a salary out of the Suitors' Fund, and it forms the first item in the Accountant-General's account. Surely that salary, being part of the rightful emoluments of the first law officer of the crown, ought, like the salaries of other judges, to be paid out of the Consolidated Fund, and the suitors relieved from this grievous imposition.

Out of the same public fund ought also to be paid the salaries of the Vice-Chancellors Knight Bruce and Wigram, amounting together to 10,000*l.* a year, which by the 4 & 5 Vict. c. 52, are charged upon and paid out of the Suitors' Fund. And so also of the 11 Masters of the Court of Chancery, whose salaries and compensations amount to 31,500*l.* a year, at present paid out of the Suitors' Fund and Suitors Fee Fund.

We heartily hope that in the present session Mr. Watson's motion for a committee of inquiry into all fees, salaries, and compensations in the courts of justice will be granted, and that when the salaries and

compensations in the Court of Chancery are brought under the consideration of the committee and reported to the House of Commons, the suitors and their fund will be relieved therefrom, and the enormous amount of fees now levied upon the suitors in order to create the Fee Fund will be, to a large extent, if not wholly, abolished.

COMPENSATION TO ASSESSORS OF COURTS OF REQUEST.

To the Editor of the Legal Observer.

SIR,—As one of the assessors of the late Court of Requests, displaced by the operation of the new County Courts Act, I avail myself of your paper as a medium for suggesting that a meeting should be held of all parties circumstanced like myself, with the view of urging upon the government our claim for compensation.

It is true the act under which we were appointed, the 7 & 8 Vict. c. 96, contained a proviso that no assessor should be entitled to compensation for the loss of his office by reason of the passing of any general act for the recovery of small debts. And no doubt this would be urged as an objection to our claims.

Whether, under the peculiar circumstances under which our displacement has occurred, even the letter of the act would bar us of our claim, may, I think, be open to question. For although the County Courts Act did abolish the courts of which we were judges, yet our title to be re-appointed as judges of the new courts was distinctly recognised; and our displacement from office is therefore less to be attributed to the force of the act of parliament, than to the fiat of the Lord Chancellor, in the mode in which he has thought fit to exercise his patronage.

But however this may be, there can be little doubt as to the general equity of our claims. That the legislature did not intend that we should be displaced, except on the ground of incompetency, (which in a general way cannot be alleged,) is too evident to require argument. And the express declarations (amounting to positive pledges) by members of the government, when the bill was introduced, recognised beyond all dispute the same principle. I do not now mean to discuss the question how far good faith has been observed in this matter towards us—I simply advert to it as proving the animus of the legislature as re-

garded our right to the appointments—and our equitable title therefore to compensation for the loss we have suffered. Certainly the fact of the legislature reserving to us a title to be re-appointed—making an express exception in favour of attorneys (like myself) from the general rule of eligibility—is in itself an admission of our claims. And if these claims have been wrongfully thrown aside—contrary to the plain intention of the legislature—we have, I think, good ground for asking for compensation; and should the government refuse to entertain our demand, I cannot but think that parliament would listen to us.

Otherwise there has been a manifest wrong done to us, not merely in misleading us with false expectations, but in inducing us to sacrifice other objects in the confidence of our re-appointment; these sacrifices being in every one case attended with the positive loss of time, money, and valuable professional engagements.

It is certain, however, that the object in view is not likely to be attained, except by our uniting for the purpose. I venture, therefore, to suggest, that all parties having an interest in the question should meet to consider the proper steps to be taken.

If any persons in a similar position to my own should, on reading these suggestions, concur in my view, you would probably be good enough to be a medium of communication between us, and in this way we may be able to form a plan for a general meeting.

London, 14th April, 1847.

H. S.

. We beg to call particular attention to this letter, and will transmit to our correspondent any communications we may receive.—ED.

THE EASTER TERM EXAMINATION.

THE notices of admission on the Roll of Attorneys for this Term, as appears by the printed list, including those by special leave of the judges, are 136

Of these candidates there have been already examined 19

Leaving the number to come up 117

It may be anticipated that the usual proportion will postpone the day of trial, (generally a very large per centage,) and if so, the number will be considerably less than 100, and the actual addition to the ranks of the profession will not be of so fearful an amount as the newspaper readers may suppose.

LAW OF ATTORNEYS.

MODE OF SERVING CLERKSHIP.

IN a trial on the recent Western Circuit, before Mr. Justice Cresswell, an articled clerk, who had instituted a prosecution against three persons for assaulting and robbing him, after giving evidence in support of the indictment, underwent a cross-examination, in which he stated that the attorney to whom he was articulated, namely, Mr. Govet, lived in London, but that he, the witness, carried on business for him in the country. Having occasion to sue a great number of people, there was a strong feeling against him, and he had become very unpopular.

Mr. Justice Cresswell, in summing up, said, the attorney was adopting a most irregular and improper practice in allowing an articled clerk to transact his business in the country, whilst he himself was living in London. *The Queen v. Shearn and others*, 6th April, 1847.

We deem it necessary to call attention to this case, because we are informed that the practice of having branch offices at a distance from the usual residence of the attorney is very frequent. Independently of all other questions, some of which are rather serious, it seems that the service of a clerkship where the attorney does not personally superintend the business will not be deemed good service.

ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

Courts of Common Law.

PRACTICE.

ABATEMENT.

The word "residence" in the 3 & 4 W. 4, c. 42, s. 8, (which requires a plea in abatement for nonjoinder to be accompanied by an affidavit stating the place of residence of the party not joined,) means the "domicile or home" of such party; therefore, an affidavit which described the party as resident at a certain place which was his home, was held a sufficient compliance with the statute, although the party was not then there, but had gone abroad for a short time. *Lambe v. Smythe*, 3 D. & L. 712.

Cases cited in the judgment: *Newton v. Verboke*, 1 Y. & J. 257; *Taylor v. Harris*, 4 B. & A. 93.

AFFIDAVIT.

1. *To support capias under a judge's order.*—An affidavit of debt, stating that the defendant is indebted to the plaintiff in a certain sum on a bill of exchange for such an amount, and for money lent, interest, &c., without showing that the interest is payable under a contract, is not sufficient. *Neale v. Snoulton*, 2 C. B. 320; S. C. 3 D. & L. 422.

Cases cited in the judgment: *Chilum v. Leean*, C. & M. 406; 2 Dowl. P. C. 381; 4 Tyrwh. 266; *Drake v. Harding*, 4 Dowl. P. C. 34.

2. *Agent*.—An affidavit sworn in London, described the party making it as the "agent for the defendant in this cause." *Held*, sufficient. *Matthewson v. Baistow*, 3 D. & L. 327.

3. *Description*.—Where a defendant was described in the writ as "Frederick C. Prosser," an affidavit in support of an application to set aside the judgment for irregularity, entitled "Henry Symes v. Frederick Coulston Prosser," is insufficient. *Symes v. Prosser*, 3 D. & L. 491; S. C. 15 M. & W. 151.

4. *Certiorari, how to be intituled*.—On moving for a certiorari to remove a conviction, the affidavits must not be intituled as in any cause, if they are so intituled they cannot be read. *Ex parte Weilwork and another*, 33 L. O. 71.

5. *Bankruptcy*.—*Costs*.—*Time of moving*.—A rule calling on the plaintiff to pay costs on the ground that he recovered a less sum than that for which he filed an affidavit in the Court of Bankruptcy must, in cases of speedy execution, be made within the first four days of the ensuing term, and in all cases before final judgment.

Quare, whether the 19th section of the Bankrupt Act, 5 & 6 Vict. c. 122, applies only to cases in which a bond is given under the 13th section. *Smith v. Temperly*, 33 L. O. 286.

6. *Failure*.—*New affidavit*.—The general rule of practice is, that if a party applying to the court fails from the incompleteness of his affidavits, he cannot be allowed to make a fresh application on affidavits supplying the defect. But where the proceedings on the first rule were rendered void and of no effect by reason of an error committed, either by the counsel in indorsing his brief, or by the officer of the court in drawing up the rule, the court (Lord Denman *dubitante*) permitted a second application to be made. *The Queen v. The East Lancashire Railway Company*, 33 L. O. 377.

APPEARANCE.

1. *Time*.—Since the 2 W. 4, c. 39, s. 11, the days between the Thursday before, and the Wednesday after, Easter-day are to be reckoned in calculating the time for appearance to a writ of summons, notwithstanding the Reg. Gen. H. T. 2 W. 4. *Harris v. Robinson*, 3 D. & L. 813.

2. *Form of entering for defendant*.—A plaintiff who sues in person may, upon the defendant's default, enter an appearance in person for him, although no such form is given in the schedule of the Uniformity of Process Act, 2 W. 4, c. 39. *Smith v. Wedderburne*, 33 L. O. 143.

3. *Motion to set aside sec. stat.*—The goods of a defendant for whom an appearance had been entered *sec. stat.*, and judgment signed for want of a plea, were seized in execution under a *fi. fa.*, on the 23rd of December. On the 18th of January a motion was made to set aside the appearance and subsequent proceedings on the ground that the defendant had never been served with any process, and that the levy was the first intimation he had that any action had been brought against him.

Held, that this application was made too late. *Jones v. Davis*, 33 L. O. 305.

4. *Authority of partner*.—*Proceedings set aside*.—One partner has no authority to direct an appearance to be entered for his co-partner, in an action against them jointly as partners, and where an appearance has been so entered with the knowledge of the plaintiff's attorney, the court will set aside the proceedings with costs. *Hambedge v. De La Cruet and Francois*, 33 L. O. 306.

5. *Irregularity*.—*Costs*.—The court will not refuse the costs of a motion to set aside an appearance and notice of declaration for irregularity, on the ground that the defendant ought to have applied in the first instance to a judge at chambers. *Burton v. Crawford*, 33 L. O. 356.

ARREST.

1. 1 & 2 Vict. c. 110.—*R. Hil. 2 W. 4, J. 85*.—*Discharge of prisoner*.—A defendant arrested on *capias* upon a judge's order, under stat. 1 & 2 Vict. c. 110, s. 3, is supersedeable, unless the plaintiff proceed to execution within two terms, inclusive, after judgment, conformably to R. Hil. 2 W. 4, J. 85. *Walter v. De Richemont*, 6 Q. B. 544.

2. *Affidavit to hold to bail*.—*Judge's order*.—The court has power to discharge out of custody a defendant arrested by order of a judge under the 1 & 2 Vict. c. 110, and the defendant may use affidavits to contradict or explain those on which the order was granted, and such affidavits may be answered by the plaintiff in showing cause.

A party arrested under the 1 & 2 Vict. c. 110, may appeal to another judge, subject to his opinion being reviewed by the court.

Where an order is improperly made under the 1 & 2 Vict. c. 110, the defendant is not entitled to set aside the *capias*, but only to be discharged out of custody.

An affidavit that deponent has been informed that defendant had said that he was about to go abroad is not sufficient to obtain an order for arrest under the 1 & 2 Vict. c. 110.

An affidavit for arrest under the 1 & 2 Vict. c. 110, stated an edict of a foreign consul requiring the defendant to return to the foreign country within a certain time, which time had then elapsed: *Held*, insufficient to found the order. *Talbot v. Bulkley, Graham v. Sandri-nelli*, 33 L. O. 307.

3. *Judgment void under 7 & 8 Vict. c. 96, s. 57*.—In an action of assumpsit, where the sum claimed in the declaration is 40*l.*, and the defendant pleads *non assumpsit* and a tender of 13*l.* 19*s.*, the cause was referred by an order of *nisi prius*, which was afterwards made a rule of court. The arbitrator awarded to the plaintiff the sum of 14*l.* 1*s.* 6*d.*, exclusive of the sum paid into court on the plea of tender, judgment was entered, costs taxed, and writs of *fi. fa.* and *ca. sa.* afterwards issued.

The court made a rule absolute for setting aside the judgment and execution, under the 7 & 8 Vict. c. 96, s. 57, which abolishes arrest on final process where the sum recovered is

less than 20l. *Richard v. Kinydon*, 33 L. O. 477.

ATTACHMENT.

1. *Personal service.*—Personal service of rule. *Semble*, that personal service, even of a rule for an attachment, may be dispensed with where there is no other remedy, and it is satisfactorily shown the party knows of the rule and is evading service of it. *Whalley, in re*, 14 M. & W. 731; S. C. 31 L. O. 17; 3 D. & L. 291; 32 L. O. 226, 584.

2. *Second application on amended affidavits.*—A rule for an attachment for non-payment of costs pursuant to the Master's allocatur and rule of court was refused, on the ground of a defect in the service of the power of attorney. A proper service was afterwards effected, and a fresh demand of the costs was made, and payment again refused: *Held*, that a fresh rule might then be obtained for the attachment. *Dixon v. Oliphant*, 15 M. & W. 152; S. C. 3 D. & L. 485.

3. *Demand of Costs.*—A demand of costs, pursuant to a Master's allocatur, indorsed on a consent rule, was held sufficient for an attachment; where the affidavit stated that the deponent had served the defendant with a copy of the original rule and allocatur, at the same time showing him the original rule and allocatur, and had "then demanded of him the costs allowed by the Master upon the said rule," although it did not appear that any sum was named. *Doe d. Tew v. Billingham*, 3 D. & L. 769.

ATTESTATION OF COGNOVIT.

A cognovit was attested as follows:—"Duly executed by me the above-named R. G. in the presence of me the undersigned S. B., attorney, on behalf of the said R. G., expressly named by him and attending at his request; and I do hereby declare that I subscribe my name as witness to the due execution hereof by the said R. G., and as his attorney, and that previous to the execution hereof by the said R. G., I informed him of the nature and effect hereof." *Held*, that it contained a sufficient declaration, that the party was attorney for the person executing. *Phillips v. Gibbs*, 33 L. O. 168.

BAIL.

Qualification.—*Railway shares.*—Shares in a railway company in actual operation are property in respect of which bail may justify. *Pierpont v. Brewer*, 15 M. & W. 201; S. C. 3 D. & L. 487.

BANKRUPT.

Discharge.—*Certificate.*—On application to a judge at chambers, under the 5 & 6 Vict. c. 122, s. 42, to discharge out of custody a bankrupt committed in execution, the production of his certificate from the Court of Bankruptcy will not of itself entitle him to discharge, but it is competent for the party opposing his discharge to show by affidavit that the bankrupt has been guilty of gaming so as to bring him within the provisions of the 38th section *Waring v. Smith*, 33 L. O. 430.

COUNTY COURT.

Suggestion on the Roll.—*Sufficiency of affidavit.*—In an affidavit in support of an application to enter a suggestion on the roll to deprive a plaintiff of costs, under a local courts act, the statements of the defendant's residence and liability to be summoned to the particular court, must be positive and sufficient in themselves.

Where, therefore, under the Middlesex Court of Requests Act, 23 G. 3, c. 33, the defendant having first described himself in his affidavit as of "No. 51, Bedford Row, Holborn, in the county of Middlesex," afterwards stated that he resided at the commencement of the action in "Bedford Row aforesaid," and was then "liable to be summoned to the court of requests held at Kingsgate Street, Holborn, aforesaid." The court held that the affidavit was not sufficient under the provisions of the 19th section of that act. *Thorne and another v. Jackson*, 33 L. O. 167.

COMMITMENT FOR CONTEMPT.

Form of order.—*Notice taken by courts of each other's practice.*—To a declaration for false imprisonment, defendant pleaded, in justification, that the Court of Review in Bankruptcy ordered that plaintiff should stand committed for a contempt of the court, and that a warrant should forthwith issue for that purpose. And that Sir G. R., one of the judges of the said court, afterwards, on, &c., according to the course and practice of the said court, made and issued out of the same court, upon the said order, his warrant in writing, whereby, after reciting the order, he directed the tipstaff of the court to arrest, &c. On special demurrer, *Held*:

1. That the words "according to the course and practice of the said court," with the context, did not necessarily imply that Sir G. R., at the time of issuing the warrant, was a judge of the court.

2. Or that, by the practice of the court, when they ordered a party to stand committed for contempt, one judge might issue his warrant or the apprehension.

3. That these facts were essential to the plea.

4. That an arrest, conformable to the practice of the court, was not admitted by the demurrer.

Assuming that the plea did, in substance, state the proceedings to be according to the practice of the Court of Review: *Held*, further,

5. That this court could not, on such general statement, pronounce the justification sufficient, since they could not judicially know the rules of practice adopted by a court of recent origin, and never communicated to them. And

6. That, if they were to intend the practice of such court to resemble that of the superior courts at Westminster, it was not conformable to the practice that, on an order of commitment by the court, one judge should issue his warrant to apprehend. *Van Sandau v. Turner*, 6 Q. B. 773.

COUNSEL'S SIGNATURE.

The signature of counsel to special pleas

need not be stated in making up the issue. *Jefferies v. Fyblonski*, 3 D. & L. 507.

COURT OF REQUESTS.

Where a cause of action to which the provisions of the 23 G. 2, c. 30, s. 5, (The Tower Hamlets Court of Requests' Act,) extend, is made the subject of an action in the superior courts, and tried on a writ of trial before the secondary, and a verdict is found for less than 40s., it is competent for the defendant to avail himself of the objection by suggestion under s. 7, although the secondary has not power to certify under s. 8. *Capes v. Jones*, 3 D & L. 779.

Case cited in the judgment: *Forbes v. Simmons*, 9 Dowl. 37; 2 Scott, N. R. 198.

CROWN.

Right of Attorney-General to remove into the Exchequer actions touching the profit of Crown.—An action of trespass *qu. cl. freg.* was brought in the Court of Common Pleas, to which the defendant pleaded pleas alleging, that the *locus in quo* was within the limits of the forest of Waltham, that the Queen was seised in fee, in right of her crown, of the forest, and justifying the trespasses as the servant and by command of the Queen. This court (after a two days' notice to and hearing counsel on behalf of, the plaintiff) ordered the cause to be removed into the Office of Pleas of the Exchequer, by a rule absolute in the first instance, on the allegation of the Attorney-General, that the profit of the crown came in question in the cause; the plaintiff being put in the same state of forwardness as he was in the Court of Common Pleas. *Attorney-General v. Hallett*, 15 M. & W. 97; S. C. 3 D. & L. 685.

Case cited in the judgment: *Hammond's case*, Hardres's Reports, p. 176.

DAMAGES.

1. *Amount of, in actions for tort.*—In actions for *tort*, the court will not interfere with the damages found by the jury, unless they appear to be grossly disproportioned to the injury sustained. When, therefore, a landlord caused considerable injury to the crops of his tenant, by selling, felling, and removing timber, without applying for leave to enter, the jury assessed the damages at 300*l.*, the court refused to interfere, although the net value of the entire crops did not exceed 200*l.* *Williams v. Currie*, 1 C. B. 841.

Case cited in the judgment: *Sharpe v. Brice*, 2 W. Blac. 942.

2. *Jury not bound to give nominal damages on promissory note, paid without interest.*—*Payment by one maker, plea of payment by another.*—A. being sued on a joint and several promissory note made by himself, and by B. and C., pleaded that he paid to the plaintiff, and the plaintiff accepted and received, the monies in the declaration mentioned, in full satisfaction and discharge of the debt and damages in the declaration mentioned; *Held*, that the plea was sustained by proof, that the amount of the note was paid by C.

Held, also, that the jury were not bound to give nominal damages, though the money was not paid until some time after the maturity of the note. *Beaumont v. Greathead*, 2 Q. B. 494; S. C. 2 D. & L. 631.

3. *Motion to increase.*—*Time.*—In case upon the 2 W. & M. c. 5, s. 4, for double value, for distraining, no rent being due, the jury ought to be directed, if they find for the plaintiff, to give damages to double the amount of the value of the goods: *Held*, that a motion to increase the damages found by the jury upon a trial in the vacation, made after the first four days of the term, is too late. *Masters v. Farris*, 1 C. B. 715.

DISCONTINUANCE.

After verdict.—In ordinary cases the court will not grant leave to a plaintiff to discontinue, when a verdict has been found against him and is not special. Assuming, that under peculiar circumstances the court would grant such leave they will not do so if there has been a delay, not sufficiently accounted for. As where a verdict for plaintiff was set aside on motion in Hilary Term, and the verdict entered for the defendant, and the plaintiff moved in Trinity Term to discontinue, without any explanatory affidavit. *Young v. Hichens*, 6 Q. B. 606.

DISTRINGAS.

1. *Affidavit.*—In the affidavit to obtain a distringas, it is not sufficient to state that the defendant has not appeared "according to the exigency of the said writ," it ought to state generally that he has not appeared. *Drage v. Bird*, 3 D. & L. 617.

2. In an affidavit for a distringas to proceed to outlawry, it should appear that a copy of the writ of summons has been left at some place, where it is probable that being so left, it may come to the defendant's knowledge. *Vernon v. Pouncett*, 3 D. & L. 744.

3. Where calls had been made at the residence of the defendant, and answers given; on one occasion, that he was at home and ill, and could not be seen; and it was sworn that it was believed that the defendant was bed-ridden, and had been confined to his house for many years; the court granted a distringas to compel an appearance, without the usual statement in the affidavit, of a belief that the defendant was keeping out of the way to avoid service. *Wilkins v. Jones*, 3 D. & L. 747.

4. The court granted a distringas for the purpose of proceeding to outlawry on an affidavit which disclosed attempts to serve the defendant at his place of business, and the leaving a copy of the process with a clerk, and also, that the defendant's place of residence could not be discovered. *Rock v. Adam*, 3 D. & L. 817.

DEATH OF PLAINTIFF.

Ca. sa.—*Discharge from custody.*—A defendant is not entitled to be discharged out of custody by reason of the death of the plaintiff after the delivery of a writ of *ca. sa.* to the sheriff and before the time of the arrest. *Ellis v. Griffiths*, 33 L. O. 213.

DECLARATION.

Capias.—The proceeding *hy capias* in pursuance of a judge's order under the 1 & 2 Vict. c. 110, is collateral to the cause, and therefore, although the defendant is arrested, and continues in custody, the plaintiff may enter an appearance for him, file his declaration, and serve notice thereof, in the same manner as if no arrest had taken place. *Neale v. Snoutten*, 3 D. & L. 422; S. C. 2 C. B. 322.

EJECTMENT.

1. *Acknowledgment of service by tenant's attorney.*—Where a subsequent acknowledgment by the attorney of the tenant, is relied on to aid an insufficient service of the declaration and notice in ejectment, the affidavit must distinctly show that the party is the tenant's attorney in the matter. *Doe dem. Reynolds v. Roe*, 1 C. B. 711.

Case cited: *Tenny d. Mills v. Cutts*, 1 Scott. 52.

2. *Jurat.*—The jurat of an affidavit purported to be "sworn in court, this 9th day of Nov. 1845," was a Sunday, the jurat was defective. *Doe d. Williamson v. Roe*, 3 D. & L. 328.

3. *Tenant.*—Where judgment had been signed against the casual ejector: *Held*, that the tenant had no *locus standi* in court before appearance, to object to the validity of the description of the premises in the declaration. *Doe d. Williamson v. Roe*, 3 D. & L. 328.

Case cited in the judgment: *Doe d. King William the Fourth v. Roe*, 13 Law J., N. S. Exchequer, 504.

4. *Notice of appearance.*—When the declaration in ejectment was intitled *Trinity Term, 9th (instead of 8th) Vict.*, and the notice had no date, but required the tenant to appear in *next Michaelmas Term, (1845.)* and a regular service was effected before that term, the court granted a rule for judgment. *Doe d. Gyde v. Roe*, 14 M. & W. 788; S. C. 3 D. & L. 309; see 32 L. O. 585.

5. *Consent Rule.*—In an action of ejectment on the separate demises of A. and B. against C. the wife of B., the defendant cannot at the trial, after having entered into the consent rule, take the objection that the lessor of the plaintiff is her husband. *Doe dem. Merigon and Daley v. Daley*, 32 L. O. 614.

6. *Service of declaration.*—In an action of ejectment brought against two persons as executors, service of the declaration upon one of them is sufficient to entitle the lessor of the plaintiff to judgment. *Doe dem. Strickland v. Roe*, 33 L. O. 46.

7. *Service of declaration and notice.*—*Attorney.*—In a motion for judgment against the casual ejector for premises of which the tenant in possession was an attorney: *Held*, that the fact of the tenant in possession being an attorney made no difference in the nature of the requisite service of the declaration and notice in ejectment, and that service on the daughter of the tenant in possession on the premises was

insufficient. *Doe dem. Fowler v. Roe*, 33 L. O. 258.

8. *Immaterial defects in declaration.*—The omission of the court in the title of a declaration in ejectment, and of the venue in the margin, where the former appears in the notice at the foot, and the latter in the body of the declaration, are immaterial on an application for judgment against the casual ejector. *Doe v. Roe*, 33 L. O. 431.

FALSE JUDGMENT.

On a return to a writ of false judgment of the proceedings in a court baron to recover a debt, the court was stated to have been held before *W. K., Esq.*, steward of the said court, and *W. U.* and *W. M.* and others, free suitors of the said court: *Held*, that it was not necessary for the proceedings to show that the steward was also steward of the manor: *Held*, also, that the above was the correct style of the court, and that it was not a necessary presumption that the steward acted judicially in the proceedings: *Held*, that it was not necessary to state the names of more than two of the suitors. *Brown v. Gill*, 3 D. & L. 823.

Cases cited in the judgment: *Jones v. Jones*, 7 Dowl. 841; 5 M. & W. 523; *Chetwode v. Crew*, Willes, 614; *Bishop v. Kaye*, 3 B. & A. 605; *Rex v. Main*, 4 T. R. 480.

FEIGNED ISSUE.

Where a feigned issue is directed, under the Interpleader Act, to try the property in certain goods, it may still be framed in the form of a pretended wager, notwithstanding the provisions of the 8 & 9 Vict. c. 109, ss. 18 & 19, although a new form of issue is given by the schedule to the latter section. *Luard v. Butcher*, 3 D. & L. 815.

FEME COVERT.

Where a married woman is taken in execution on a judgment obtained in an action commenced against her when sole, the court will not discharge her out of custody, although it appear that she has no separate property. *Banin v. Jones*, 3 D. & L. 667.

Case cited in the judgment: *Doyley v. White*, Cro. Jac. 323.

FIERI FACIAS.

A *ca. sa.* was issued against both defendants on the same day that final judgment was signed, and one of the defendants was taken under it, and subsequently discharged under the insolvent act. The plaintiff instructed the sheriff not to execute the writ against the other defendant, and the writ remained in the sheriff's hands unreturned: *Held*, that a writ of *fi. fa.*, which was issued against the goods of the other defendant more than a year from the date of the judgment, was not irregular for want of the writ of *ca. sa.* being previously returned, or of a *sci. fa.* being issued to revive the judgment. *Franklin v. Hodgkinson*, 3 D. & L. 554.

Case cited in the judgment: *Greenhields v. Harris*, 2 Dowl. N. S. 272; 9 M. & W. 775.

HABEAS CORPUS.

1. *Bankrupt*.—A warrant of a commitment of a bankrupt for not giving satisfactory answers, recited the issuing of a fiat, "directed to her Majesty's Court of Bankruptcy for the Leeds district," against *J. R.*; and that *J. R.* duly surrendered "to *M. J. West, Esq.*, one of the commissioners of the said court authorised to proceed with the said fiat." It then stated several examinations before *M. J. W.*, *Esq.*, after "being duly sworn," and proceeded thus:—"And whereas the said *J. R.* did, on," &c., "pursuant to a summons issued by me at the request," &c., "of the assignees," &c., "appear before me the commissioner then acting in the prosecution of the said fiat," "to be examined," &c. "And *I, W. Burge, Esq.*, the said commissioner, in execution of the powers," &c., "proceeded to examine the said *J. R.*," &c., "and the said *J. R.* being then duly sworn and required before me to make true answers," &c. The warrant then set out several questions and answers, and other adjournments and examinations, where the bankrupt was stated to be "duly sworn;" "which answers not being satisfactory," &c., "these are therefore," &c. "Given," &c., "at the Court of Bankruptcy for the Leeds district," &c. Signed, "*W. Burge, Commissioner.*" (*L. S.*) *Held*, on motion for a *habeas corpus*, that the warrant was bad, as showing that the bankrupt was sworn at his examination, contrary to the 8 & 9 Vict. c. 48, s. 1. *Ramsden, in re*, 3 D. & L. 748.

2. *Bankrupt*.—A warrant of commitment of a bankrupt for not giving satisfactory answers, stated that "a fiat in bankruptcy, directed to her Majesty's Court of Bankruptcy for the Leeds district, was duly awarded and issued against *Francis Ward*;" "and whereas the said *Francis Ward* did, on," &c., "surrender himself to me, *Martin John West, Esq.*, one of the commissioners of the said court authorised to act in the prosecution of the fiat," &c. It then set forth the examination and the questions and answers, and proceeded, "which answers of the said *F. W.* are not, nor are any of them, satisfactory to me the said commissioner," "these are therefore to require you," &c.

Held, upon motion for a *habeas corpus* to discharge the bankrupt, that the jurisdiction of the commissioner to make the order sufficiently appeared; although there are two commissioners in the Leeds district, and it was not stated that the fiat had been allotted to the commissioner in question, or that he was acting in the absence of the other commissioner, in pursuance of the rules and orders made by the bankrupt commissioners under the 5 & 6 Vict. c. 122, s. 70.

Held, also, that it was not necessary to specify which of the answers were unsatisfactory; although there were some, that taken separately and apart from the rest, could scarcely be deemed so. *Ward, ex parte*, 3 D. & L. 766.

Cases cited in the judgment: *In re Hadland*, 1

Dowl. N. S. 835; *Ex parte Dauncey*, 4 Q. B. 668; 3 G. & D. 640.

3. On motion for a *habeas corpus*: *Held*, that it is not necessary that a bankrupt should make and sign the declaration required by the 8 & 9 Vict. c. 48, previous to such examination. It is sufficient if he do so previous to the first examination. *Bull, in re*, 3 D. & L. 763.

HEARING.

Frivolous plea.—The court upon motion will direct, that the demurrer, to what appears to be a frivolous plea put in for delay, be placed at the top of the special paper, so as to secure its being heard as soon as possible. *Nye v. Roche*, 33 L. O. 306.

INDORSEMENT OF DEBT.

1. *Writ of summons*.—*Amount of debt*.—It is sufficient, where interest is claimed upon a debt, to state the time from which it is so claimed, without specifying the rate. *Allen v. Bussey*, 33 L. O. 46.

2.—*Writ of summons*.—*Residence*.—Where a writ of summons is sued out by the plaintiff in person, the indorsement of his place of residence should state either the parish, city, or town in which such residence is situate; and an omission in that respect amounts to an irregularity. *Ruby v. Nicholls*, 33 L. O. 355.

INQUISITION.

A commission tested 21st of Feb., and returnable 15th of April, 1843, authorised the commissioners to inquire whether *D.* is now indebted to the crown in any and what sums. The inquisition thereon, dated 1st of March, 1843, found that *D.* was, on the day of taking the inquisition, indebted to the Queen in a certain sum, for customs duty on silk imported by him between the 8th and 14th of Feb., 1841. A *sci. fa.* issued on this inquisition, tested the 30th of March, 1843. *Held*, 1st, that the finding in the inquisition was not inconsistent with the authority given to the commissioners, and that the form of the commission and inquisition was according to the established precedents. 2ndly, that the fact of the *sci. fa.* having issued before the commission was returnable, was a mere irregularity, and not a ground of error. *Dean v. The Queen*, 3 D. & L. 714.

Cases cited in the judgment: *Attorney-General v. Anstead*, 12 M. & W. 520; *Rex v. Pearson*, 3 Price, 288.

IRREGULARITY.

The copy of a writ of summons served on the defendant was indorsed,—"The plaintiff claims 150*l.*, and interest for debt, and 3*l.* 3*s.* costs:" *Held*, irregular, and that the motion was correctly made to set aside the writ of summons as well as the copy and service thereof. *Chapman v. Beeke*, 3 D. & L. 350.

Case cited in the judgment: *Fitzgerald v. Evans*, 5 M. & G. 207; 6 Scott, N. R. 220; 2 Dowl. N. S. 916.

ISSUE.

1. The issue on a writ of trial need not state

the day of the return, but should state the teste of the writ. The court will not, however, on account of that omission, set aside the issue, but will direct it to be amended, at the cost of the plaintiff. *Jefferies v. Yablonski*, 3 D. & L. 807.

See Counsel's Signature.

2. *Similiters to replication.*—Plaintiff having delivered a replication to several pleas, concluding to the country as to each plea, but traversing one with a special inducement, added the similiters, made up and delivered the issues, and gave notice of trial. Defendant struck out the similiters, and gave notice thereof to plaintiff, but did not deliver a rejoinder or notice of his intention to rejoin. Afterwards defendant cravedoyer of an indenture mentioned in the special inducement, and delivered a rejoinder with a demurrer to the replication containing that inducement, and a similiters as to the rest; and also gave notice that he should not appear on the trial, but should move to set aside any trial had. Plaintiff proceeded to trial, and obtained a verdict, defendant not appearing.

The court set aside the verdict and trial, with costs. *Twycross v. King*, 6 Q. B. 663.

JUDGE'S ORDER.

1. *How far a party concluded by his own conduct.*—A judge's order to set aside a judgment and execution for irregularity was made, imposing as terms on the defendant, that he should not bring an action; and at the time such order was made, the attorney for the defendant protested against the power of the judge to impose such terms, but he accepted the order and served it.

Held, that the defendant, having accepted and served the order, was precluded from afterwards objecting that the judge had no power to impose terms on the defendant that he should not bring an action. *Pearce v. Chaplin*, 33 L. O. 140.

2. *Particulars of demand.*—*Waiver by defendant*—After an order for particulars of the plaintiff's demand, with a stay of proceedings, has been obtained and served, the defendant may, by giving a notice of abandonment of the particulars to the plaintiff's attorney, waive the order, and at the same time proceed in the action by delivering his pleas or demurrer. *Maunder v. Collett*, 33 L. O. 259.

3. *Rule of Court.*—A rule to make a judge's order a rule of court with costs, is absolute in the first instance if moved upon the affidavit required by the Reg. Gen. Trin. 3 Vict. *Black v. Lowe*, 33 L. O. 260.

JUDGMENT.

Time.—When judgment in debt was signed for want of a plea: *Held*, that the time ran from such signing, although the costs were not taxed. *Walter v. De Richemont*, 6 Q. B. 544.

JUDGMENT AS IN CASE OF NONSUIT.

1. *Rule to discontinue, not a stay of proceedings.*—The plaintiff, being under a peremptory undertaking to go to trial on the 10th January,

obtained a side-bar rule to discontinue on payment of costs, the plaintiff undertaking to pay the said costs, and consenting to judgment of *non-pros.* if not paid in four days. On the 10th January, the plaintiff's attorney obtained and served on the defendant's attorney, an appointment for taxation, at 11 o'clock on the 12th, at which time the defendant's attorney attended before the Master, but protested against the rule to discontinue as being irregular, and declined to bring in his costs to be taxed; and on the same day he obtained a rule absolute for judgment as in case of a nonsuit: *Held*, that this judgment was regular. A rule to discontinue is not a stay of proceedings. *Beeton v. Jupp*, 15 M. & W. 149.

2. Issue was joined on the 3rd June, 1844, and notice of trial given for the adjourned sitting after Trin. Term, 1844, which was afterwards postponed by consent to the sittings after Michaelmas Term, in the same year. The record was at those sittings withdrawn on the ground of the absence of some material witnesses on the part of the plaintiff. In Trinity Term, 1845, the plaintiff obtained commissions to examine his witnesses abroad, and in July in the same year, the defendants also obtained a judge's order for a commission to issue to examine witnesses on their behalf, which order contained the usual proviso, that the trial of the cause should not be proceeded with till the return of the commission. The defendants did not issue any commission: *Held*, that they had waived any right they might have had to move for judgment, as in case of a nonsuit. *Bordier v. Barnett*, 3 D. & L. 370.

3. After issue joined, and notice of trial given in a town cause for the sittings after Easter Term, it was made a remanet to the sittings after Trinity Term. The plaintiffs then made default: *Held*, that the defendant was entitled to move for judgment as in case of a nonsuit. *Ladbroke v. Williams*, 3 D. & L. 368.

Case cited in the judgment: *Ham v. Gray*, 6 B. & C. 125; 9 D. & R. 125.

4. A rule to discontinue on payment of costs is no stay of proceedings; therefore, where a plaintiff served a rule to discontinue, with an appointment to tax costs, and on the following day the defendant obtained a rule absolute for judgment as in case of a nonsuit: *Held*, that the judgment was regular. *Baker v. Jupp*, 3 D. & L. 474.

5. A rule for judgment as in case of a nonsuit was discharged on a peremptory undertaking to try within two months before the under-sheriff; notice of trial was given by the plaintiff to try at a court day to be held by the under-sheriff two days before the expiration of the two months, but the under-sheriff did not hold any court for the trial of cases on that day: upon this the plaintiff gave a fresh notice of trial to try at a day subsequent to the expiration of the two months, and then tried the cause and obtained a verdict, the defendant not appearing.

Held, that this was irregular, and that the

trial must be set aside, with costs. *Held*, also, that as the court would have enlarged the peremptory undertaking of the plaintiff, had he come to the court for that purpose, instead of going on to trial, that it would in its discretion do so now. *Bushnell v. Slack*, 33 L. O. 93.

6. *Security for costs.—Assignees.*—In an action by the assignees of a bankrupt, the plaintiffs being the official assignee and the creditors' assignee, the former obtained a rule to stay proceedings until security for costs was given. The defendant was no party to that rule, and the security not having been given, and the proceedings in consequence stayed, the defendant moved for judgment as in case of a nonsuit: *Held*, that he was entitled to judgment. *Laves and another, assignees, v. Bott*, 33 L. O. 431.

7. *Peremptory undertaking.*—Where a rule for judgment as in case of a nonsuit, had been discharged on a peremptory undertaking to try within a certain time, and the trial took place after the expiration of the time, but before the court could be moved for a rule for judgment for the default, the court granted a rule in the alternative for judgment as in case of a nonsuit, or for setting aside the trial. *Bushell v. Slack*, 33 L. O. 20.

JURISDICTION.

Discharge of Bankrupt under 5 & 6 Vict. c. 122, s. 42.—Where an application to discharge a bankrupt out of custody under the statute 5 & 6 Vict. c. 122, s. 42, has been refused by a judge at chambers, this court has no jurisdiction to interfere with that decision; but a fresh application may be made to the judge at chambers, if the circumstances of the case will justify it. *Waring v. Smith*, 33 L. O. 92.

LACHES.

1. Notice of trial having been given for the first sittings in Term, the 16th of April, the defendant obtained a rule for a special jury on the 9th, which he served on the plaintiff on the 13th. The Master's office was closed on the 10th for the holidays, and remained so till the 15th, on which day the defendants served another copy of the rule on the plaintiff, together with an appointment to nominate the jury on the 18th. *Held*, that the defendants had been guilty of no laches; and the court therefore refused to discharge the rule for a special jury. *Gurney v. Gurney*, 3 D. & L. 734.

2. Where proceedings are taken against good faith, the party must come promptly to set them aside, as in the case of an irregularity. Therefore, where a judgment was signed against good faith, of which the defendant had notice on the 6th of April, an application to set it aside on the 20th of the same month was held too late. *Saunders v. Jones*, 3 D. & L. 770.

MANDAMUS.

1. *Second application.*—Where a rule for a mandamus to compel a corporation to make an

order has been discharged, on the ground that no demand and refusal have taken place, the court will not grant a new rule for a mandamus to the same effect, though a demand and refusal have taken place since the discharge of the former rule. *Thompson, ex parte*, 6 Q. B. 721.

2. *Defects in writ, how available.—Traverse of return.*—On demurrer to a traverse of the return to a mandamus, the defendant may impeach the validity of the writ.

So held by the Court of Exchequer Chamber, affirming the judgment of the Court of Queen's Bench. *Clarke v. Leicestershire and Northamptonshire Canal Company*, 6 Q. B. 898.

Case cited in the judgment: *Rex v. Margate Pier Company*, 3 B. & Ald. 220.

3. *Conviction.*—When magistrates convicted a person under an act of parliament which was repealed, and they afterwards convicted him for the same offence under a subsequent act, but refused to enforce the penalty, the court in the exercise of its discretion refused to grant a mandamus to the magistrate to enforce the penalty. *Ex parte Thomas*, 33 L. O. 454.

NEW TRIAL.

A cause was tried before the under-sheriff during the long vacation, and a verdict found for the plaintiff; a judge's order was then obtained by the defendant to stay all further proceedings until the fifth day of the next term: *Held*, that a motion made on the fifth day of term for a new trial was too late. *Roberts v. Foulkes*, 33 L. O. 71.

NOTICE OF INQUIRY.

Where the plaintiffs had given a 14 days' notice of a writ of inquiry in an action in which the venue was laid in Middlesex, and afterwards gave notice of continuance, which was not sufficient if the defendant resided more than 40 miles from London: *Held*, on motion to set aside the execution of the writ of inquiry, on the ground of insufficiency of the notice of continuance, that the defendant's affidavit was sufficient, which described him as "of Ragland," in the county of Monmouth, and which stated that he had received no other notice of continuance than the one so given, and that Ragland was 136 miles from London; although it did not state in positive terms that he resided at Ragland. *Saunders v. Jones*, 3 D. & L. 770.

NOTICE OF TRIAL.

In a London cause which stood for trial for the first sittings in Michaelmas Term, the plaintiff, on the 24th of November, gave notice of continuance to the first sittings after Term: *Held*, that although this was virtually a notice for the adjournment day, the 15th of Dec., and the plaintiff had therefore full time to countermand the 1st notice, and give a fresh notice of trial; that he was not bound to do so; and that the notice of continuance was sufficient. *Toulmin v. Elgie*, 3 D. & L. 558.

ORDER OF JUDGE.

Semble, that the order promulgated on the 12th of June, 1846, respecting judges' orders for judgment, does not necessarily render an order actually made; though the execution of the consent may have been improperly attested. *Dixon v. Sladdon*, 3 D. & L. 697.

And see *Judges' Order*.

OUTLAWRY.

After motion to reverse an outlawry has been discharged, the court will not reverse it on a new motion founded upon affidavits not stating any fact subsequent to the first application, but will put the defendant to his writ of error. *Stulz v. Wyatt*, 6 Q. B. 666.

PARTICULARS OF DEMAND.

1. *Action by railway engineer*.—In an action by an engineer against the committee of a railway company for making the survey, &c., the particulars of demand merely claimed certain aggregate sums in respect of the survey of a stated number of miles, and for tavern and travelling expenses, assisting the solicitor with books of reference, engraving plates of plans, printer's account, &c. The court refused to order fuller particulars. *Higgins v. Ede*, 15 M. & W. 76; S. C. 3 D. & L. 470, n.

2. *Action by railway engineer*.—In an action by an engineer against the committee of a railway company, for making the survey, &c., the particulars of demand claimed an aggregate sum for surveying and levelling the line, making trial sections, finding surveyors, levellers, and engineers, meeting and arranging with the solicitors, assisting at the reference, superintending the engravings, &c., including tavern bills, travelling charges, office expenses, &c., so many miles at a certain sum per mile. The court refused to order fuller particulars, or to compel the plaintiff to distinguish between his own personal charges and those of the surveyors, &c., employed by him, or to particularize the sums actually expended by him. *Rennie v. Beresford*, 15 M. & W. 78; S. C. 3 D. & L. 464.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Hughes v. Williams. March 26th, 1847.

NEW ORDERS (NO. 116).—SETTING DOWN CAUSE IN CONTRAVENTION OF A MASTER'S ORDER.

A defendant cannot, under the 116th Order of May, 1845, set down the cause for hearing and issue subpoena to hear judgment pending an order by the Master to enlarge publication as to co-defendant.

An order of a Master, however obviously irregular, is binding on all parties having notice of it until duly set aside.

Mr. *Freeling* for some of the defendants stated, that this was an appeal motion from a decision of Vice-Chancellor *Wigram*. Publication in the cause passed on the 7th of January last. On that day a warrant was taken out by another defendant, and served only on the plaintiff for time to enlarge, which was granted on the 11th. The defendants for whom the learned counsel appeared received notice of this enlargement on the 18th by a letter from the plaintiff's solicitor, but, nevertheless, proceeded on the 9th of Feb. to set down the cause, and issued subpoena to hear judgment pursuant to the 116th Order of May, 1845. On the 24th of Feb. his Honour granted, with costs as to these defendants, the plaintiff's motion that the cause might be struck out of the registrar's book for having been improperly set down by them before publication had passed, and that the subpoena to hear judgment might be set aside.

Mr. *Freeling* contended that the Master had no jurisdiction to enlarge the time for publication after it had actually passed. *Carr v. Appleyard*, 2 Myl. & Cr. 476; *Strickland v. Strickland*, 4 Beav. 146. At any rate these defendants ought to have been served with the warrant to attend the application to enlarge. Reference was made to the cases of *Chuck v. Cremer*, 2 Phil. 113, (and 33 L. O. 112); *Wallis v. Glyn*, 19 Ves. 380.

The Lord Chancellor, without hearing the other side, observed that the decision of the Vice-Chancellor appeared to be quite right. After publication had passed, these defendants, in ignorance of what had been done, intimated their intention of procuring the bill to be dismissed for want of prosecution. They were then informed by the plaintiff that he was restrained from proceeding by an order obtained by a co-defendant to enlarge the time of passing publication. The orders of the Masters, until duly set aside, are equally binding with those of the court upon parties having notice. His lordship was of opinion that these defendants had been properly ordered to pay the costs in the court below, (Mr. *Wood*, who appeared for the plaintiff, having stated that they had been given by his Honour expressly on the grounds that the defendant had been informed of the order to enlarge publication,) and must, with equal propriety, pay those of the present application.

Rolls Court.

Arnold v. Arnold. March 23rd, 1847.

AMENDMENT OF BILL.—DELAY.

In general an order of course to amend obtained at the Rolls in a cause attached to another branch of the court cannot be discharged, except for irregularity, or by the Lord Chancellor. But *Quere*, whether the order might not be discharged at the Rolls, upon an application there, founded on an opinion expressed as to the merits of the case by the judge before whom the cause is.

In this case a motion was made to discharge an order to amend obtained as of course at the Rolls, under circumstances of delay in getting in the answers of some of the defendants similar to those mentioned in the preceding case of *Foreman v. Grey*, (reported p. 452, *ante*); but the cause was attached to the Vice-Chancellor Wigram's Court.

Mr. Hare for the motion.

Mr. Elderton *contra*.

Lord Langdale refused the motion upon the ground that the order was not irregular, and that he could not discharge it upon the merits as shown before him, because the cause was not attached to his court. His lordship observed, that the Lord Chancellor might discharge the order on the merits, because he had jurisdiction over the case as well as over the order, and might therefore deal with it on other grounds than those of its irregularity, which alone were open at the Rolls. He added, however, that if he could assist the practice by discharging the order on the ground of the merits, as appearing to Vice-Chancellor Wigram, he would willingly do so.

Vice-Chancellor of England.

Pesterre v. Willis. March 10, 1847.

PARTNERSHIP.—PRODUCTION OF DOCUMENTS.

A partner who has mixed accounts of the partnership transactions with accounts of his own private affairs is bound, in a suit instituted for an account of the partnership transactions, to produce the book containing such accounts.

THE bill in this case was filed for an account of certain partnership transactions between the plaintiff and defendant, and the answer of the defendant having admitted the possession of certain accounts and documents relating to such transactions, a motion was now made for production. The defendant objected to produce his bankers' pass book, upon the ground that it was his own private book, and as he had found all the capital for the concern, the monies which had been received on account of the partnership were paid to him as a matter of course, and by him paid through his bankers.

Mr. James Parker and Mr. Fisher, in support of the motion, contended, that the plaintiff was entitled to the production of all books and accounts in which any of the partnership transactions appeared, and that the defendant ought to have kept distinct accounts.

Mr. Rolt and Mr. Willcock, *contra*, said, that the bill expressly charged that accounts had from time to time been settled between the parties, and prayed that such accounts might be considered as settled, so that no discovery was necessary. There were also other books which contained accounts of all the partnership transactions, so that it could not be necessary to see the plaintiff's private pass book.

The Vice-Chancellor said, that, on the defendant's own showing, when he received monies belonging to the partnership he paid

them into his bankers. They were therefore unquestionably partnership monies, and it was premature to say they were his monies, for until an account was taken they must be considered as partnership property. If then he had blended the partnership accounts with accounts of his own private affairs, he must take the consequence. The usual order must be made for production, with liberty for the defendant to seal up such parts as did not relate to the partnership transactions.

Vice-Chancellor Knight Bruce.

Johnson v. Barnes. Feb. 24th, 1847.

PRACTICE.—ERRONEOUS SERVICE OF SUBPŒNA.

If a defendant is served with a copy of a subpœna without the indorsement required by 3rd Order of Dec., 1833, if he come speedily to the court, he has a right to set the service aside with costs. A defendant having obtained an order to enter an appearance for the defendant on an untrue allegation of the regularity of the service of the copy of the subpœna, the plaintiff applied to the court and got the order set aside with costs.

THE plaintiff in the suit served a copy of the subpœna upon the defendant without the indorsement required by the 3rd Order of Dec., 1833; he then, on affidavit of the due service of the copy of the subpœna, obtained an order to enter an appearance for the defendant. The solicitor for the plaintiff afterwards abandoned the service and the order.

A. J. Lewis, for the defendant, moved, on behalf of the defendant, that the copies and service of the subpœna might be discharged for irregularity, with costs, and also, that the order to enter the appearance should in like manner be discharged for irregularity, with costs, on the ground, that the representation of the due service of the copy of the subpœna was untrue.

Fooks insisted that the defendant was not entitled to have the costs, as the order was made in November, and she had acquiesced until February.

The Vice-Chancellor was of opinion, that it was the right of the party to have the service of the subpœna set aside, and, if he came with speed, with costs. The order was made in November, and the apology for not coming till February made the case worse for the plaintiff, for he had obtained and served an order to enter an appearance for the defendant. The service and the order must be discharged with costs.

Queen's Bench.

(Before the Four Judges.)

Ex parte the Overseers of the Township of Leeds.
Sittings in Banco after Hilary Term, Feb. 13th, 1847.

SESSIONS.—APPEAL.—PRACTICE.

An appellant parish has the option of appeal-

ing to the next practicable sessions, either after the service of the order of removal, with the other documents required by the 4 & 5 W. 4, c. 76, s. 79, or after the actual removal of the pauper.

An order of removal was made on the 15th of April, 1846, which, with the necessary documents, was served on the appellant parish on the 30th. The next sessions were held on the 7th July, but no notice of appeal was given for those sessions, nor was any appeal then entered. On the 18th July the paupers were removed. In September notice of appeal was given, and the appeal came on to be heard at the October sessions. At the trial it was contended that the appeal was too late, that the appellants were aggrieved by the service of the order, and that under the 4 & 5 W. 4, c. 76, ss. 78 & 81, the July sessions were the next practicable sessions. The objection was overruled, and the appeal heard.

Mr. Hall moved for a rule to show cause why a certiorari should not issue to bring up the order of sessions on the ground that the sessions had no jurisdiction. A practice seems to be established by the cases *Regina v. The Justices of Salop*,^a and *Regina v. The Justices of the West Riding*,^b that a parish has the option of appealing either after the service of the order, or after the removal of the pauper. That practice is directly opposed to the spirit of the Poor Law Amendment Act, which, as stated by Williams, J., in *Regina v. The Justices of Herefordshire*,^c was to prevent the removal of paupers till the settlement was finally ascertained. The service of the order constitutes the grievance, and the time for appealing dates from that period. As soon as an appellant parish receives an order it becomes liable to pay costs, and is consequently aggrieved. A fresh right of appeal does not arise from the act of removing the pauper. The one is the grievance, the other is only the consequence of that grievance. *Regina v. Bishop Wearmouth*,^d *Rea v. The Justices of Pembrokeshire*.^e

Cur. adv. vult.

Lord Denman, C. J., delivered the judgment of the court. We have paused before we granted a rule that might produce for a time, at least, uncertainty in the practice. The motion is founded on the 4 & 5 W. 4, c. 76, ss. 79 & 81, and a case in the Bail Court, before Mr. Justice Wightman, *Regina v. The Justices of the West Riding*, in which he considered that the making and serving of an order of removal, with notice of chargeability and copy of examination, might, since the 4 & 5 W. 4, c. 76, constitute a sufficient ground to warrant an appeal. In coming to this conclusion there was no intention to overrule the case of *Regina v. The Justices of Salop*, as to the point determined in it, that the appellant may treat the actual removal of the pauper as a

grievance to be appealed against. But Mr. Justice Wightman considered that the appellant might, if he pleased, treat either the service of the order of removal, with the other documents, or the actual removal of the pauper, as the grievance to be appealed against; and that no practical inconvenience can arise from giving the appellant such an option, but rather the contrary; and in this view of the case we concur. On the point in question we are disposed to think that the cases of *Regina v. Salop* and *Regina v. The Justices of the West Riding* are not inconsistent. And this view of the case is in accordance with the view taken by Mr. Justice Patteson, in *Regina v. The Justices of Middlesex*.^f We therefore think it desirable to declare immediately that we entertain no doubt on this subject, and that the practice which has long prevailed is to continue; and of course there will be no rule granted.

Rule refused.

Exchequer.

Pilkington v Cook. Hilary Term, Jan. 12, 1847.

SHERIFF.—POUNDAGE.—FEES.—
EXTORTION.

A sheriff is liable, under the 29 Eliz. c. 24, to treble damages for extortion, notwithstanding the 1 Vict. c. 55, allows additional fees.

A declaration framed on the former statute is sufficient: if the defendant relies upon the latter, he must plead it as matter of defence.

THIS was an action against the Sheriff of Yorkshire, to recover treble damages for taking more than is allowed by the 29 Eliz. c. 24, in executing a writ of *fiery facias*. The declaration was framed on the above statute in the ordinary form. The defendant demurred, and the principal objection was, that the 1 Vict. c. 55, virtually repealed the 29th Eliz. c. 24, or if not, the declaration ought to have shown that the sum taken was greater than allowed by both acts.

Rea in support of the demurrer. Since the 1 Vict. c. 55, the sheriff may take more fees than allowed by the 29 Eliz. c. 4. *Davies v. Griffith*, 4 M. & W. 377. The statute of Elizabeth only enables sheriffs to take twelve pence for every twenty shillings when the sum levied does not exceed 100*l.*, and sixpence for every twenty shillings above 100*l.* The prohibitory part of that statute extends to all fees beyond poundage. *Woodgate v. Knatchbull*, 2 T. R. 157; *Buckle v. Bewes*, 3 B. & C. 688. But the statute of Victoria allows other fees beyond poundage, so that it in effect repeals the prohibitory part of the statute of Elizabeth. The plaintiff ought therefore to have shown in his declaration that the defendant was not entitled under the statute of Victoria to take what he did. *Thibault v. Gibson*, 2 M. & W. 89; *Simpson v. Ray*, 12 M. & W. 736; *Clayton v. Kynaston*, 2 Salk. 574; *Newis v. Lark*, Plowd.

^a 6 Dowl. 28. ^b 2 Dowl. & Lownd. 488.

^c 8 Dowl. 638. ^d 5 Bar. & Adol. 942.

^e 2 East, 213.

^f 9 Dowl. 163.

410; *Usher v. Walter*, 4 Q. B. rep. 553; *The Trustees Northleach and Witney Roads*, 5 B. & Adol. 978; *Paget v. Foley*, 2 Bing. N. C. 679. Even if the statute of Elizabeth is not repealed, the same objection to the declaration would exist, for the offence does not arise from the disobedience of that statute alone, but from the disobedience of both, and as the qualifications of the latter act must be taken as incorporated with the former, they must be negatived by the party relying on it.

Cowling contra. The statute of Elizabeth gives poundage as a recompense for levying. *Walden v. Vessey*, Noy, 75. The statute of Victoria gives "fees" in addition to poundage. *Curlewis v. Bird*, 1 Dow. N. S. 752. The one, therefore, does not repeal the other, but both may well stand together. Besides, it does not appear by the record that any scale of fees has been allowed. The present action is founded on the general prohibition contained in the statute of Elizabeth, and the declaration is in the same form as that in *Buckle v. Bewes*, 3 B. & C. 688.

Cur. adv. vult.

The judgment of the court was delivered by *Parke, B.* The 1 Vict. c. 55, was passed to increase and fix the remuneration to be paid to the sheriff or his officers according to the discretion of the judges. This statute does not recite the 29 Eliz. c. 44, nor expressly repeal it, but leaves the right to poundage untouched. But then it was said that it impliedly repeals the statute of Elizabeth as to the clause giving the penalty. We think the effect of the statute of Victoria is to legalise the receipt of fees beyond the poundage only in those cases in which the judges should make any order to permit it. The judges might never exercise their power in any case, therefore it was only contingent whether the statute of Elizabeth would be altered by the statute of Victoria. If the court could take notice that the judges had exercised that power, as perhaps they ought, (for they are bound to take notice of the course of proceedings of the superior courts,) still we could not assume that such regulation had been made before the particular sum mentioned in the declaration was received, and consequently, so far as we can tell from the date, the statute of Elizabeth was in full force and unrepealed in any respect at the time of the alleged offence. Therefore, the declaration seems to us to be sufficient. If the statute of Victoria expressly enacted, that in all cases in which the sheriff took no more than the additional sum sanctioned by the judges, he should be exempted from the penalties of the statute of Elizabeth, this declaration would nevertheless be good, for in that case the matter should come by way of defence. We think that the operation of the statute of Victoria was to constitute an exception from the statute of Elizabeth only where it is expressly enacted that such cases should be exempt from the operation of that act. Consequently our judgment must be for the plaintiff; but if the defendant will procure an affidavit that no more was taken

than the scale of fees allowed, he may be let in to amend on the usual terms.

CHANCERY SITTINGS.

Lord Chancellor.

AT WESTMINSTER.

Before and in Easter Term, 1847.

Tuesday . April 13 } Appeals.
Wednesday . . 14 }

EASTER TERM.

Thursday . . . 15 } Appeal Motions and Appeals.

Friday . . . 16 (Petition-day) Petitions.

Saturday . . . 17 }

Monday . . . 19 } Appeals.

Tuesday . . . 20 }

Wednesday . . 21 }

Thursday . . . 22 } Appeal Motions and Appeals.

Friday . . . 23 } (Petition-day) Unopposed Petitions, and Appeals.

Saturday . . . 24 }

Monday . . . 26 } Appeals.

Tuesday . . . 27 }

Wednesday . . 28 }

Thursday . . . 29 } Appeal Motions and Appeals.

Friday . . . 30 }

Saturday . May 1 } Appeals.

Monday . . . 3 }

Tuesday . . . 4 }

Wednesday . . 5 }

Thursday . . . 6 }

Friday . . . 7 } (Petition-day) unopposed Petitions and Appeals.

Saturday . . . 8 Motions and Appeals.

N. B.—Such days as his Lordship is occupied in the House of Lords excepted.

Master of the Rolls.

See page 552, ante.

Vice-Chancellor of England.

Tuesday . April 13 } *Mozley v. Alston* 2 demrs. pt. hd.

Wednesday . . 14 } *Beale v. Ditto*, demr.

Wednesday . . 14 } *Guepratte v. Young*, by order
Preston v. Huxley, ditto.

EASTER TERM.

Thursday . . . 15 Motions.

Friday . . . 16 } (Petition-day) Petns. (unopposed first), Short Causes, and Petitions.

Saturday . . . 17 }

Monday . . . 19 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Tuesday . . . 20 }

Wednesday . . 21 }

Thursday . . . 22 Motions.

Friday . . . 23 } (Petition-day) Petitions, (unopposed first) Short Causes, and Causes.

Saturday . . . 24 }

Monday . . . 26 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Tuesday . . . 27 }

Wednesday . . 28 }

Thursday . . . 29 Motions.

Friday . . . 30	{ (Petition-day) Petitions (unopposed first,) Short Causes, and Causes.
Saturday . . . May 1	
Monday . . . 3	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 4	
Wednesday . . . 5	
Thursday . . . 6	
Friday . . . 7	{ (Petition-day) Petitions, (unopposed first,) Short Causes, and Causes.
Saturday . . . 8	Motions.

Vice-Chancellor Knight Bruce.

Tuesday . April 13	Motions and Causes.
Wednesday . . 14	{ Petitions, Bankruptcy Petitions and Causes.

EASTER TERM.

Thursday . . . 15	Motions and Causes.
Friday . . . 16	{ (Petition-day) Petitions and Causes.
Saturday . . . 17	Short Causes and Causes.
Monday . . . 19	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 20	
Wednesday . . 21	{ Bankrupt Petitions and Ditto.
Thursday . . . 22	Motions and Causes.
Friday . . . 23	{ (Petition-day) Petitions and Causes.
Saturday . . . 24	Short Causes and Causes.
Monday . . . 26	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 27	
Wednesday . . 28	{ Bankrupt Petitions, and Ditto.
Thursday . . . 29	Motions and Causes.
Friday . . . 30	{ (Petition-day) Petitions and Causes.
Saturday . May 1	Short Causes and Causes.
Monday . . . 3	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 4	
Wednesday . . 5	{ Bankrupt Petitions and Ditto.
Thursday . . . 6	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . 7	{ (Petition-day) Petitions and Ditto.
Saturday . . . 8	Short Causes and Motions.

Vice-Chancellor Stirling.

Tuesday . April 13	{ Causes, Exceptions, and Further Directions.
Wednesday . . 14	

EASTER TERM

Thursday . . . 15	Motions and Causes.
Friday . . . 16	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . . . 17	{ Short Causes, Petitions, (unopposed first,) and Causes.

Monday . . . 19	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 20	
Wednesday . . 21	
Thursday . . . 22	Motions and ditto.
Friday . . . 23	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . . . 24	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 26	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 27	
Wednesday . . 28	
Thursday . . . 29	Motions and ditto.
Friday . . . 30	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . May 1	{ Short Causes, Petitions (unopposed first,) and causes.
Monday . . . 3	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 4	
Wednesday . . 5	
Thursday . . . 6	
Friday . . . 7	{ Short Causes, Petitions, (unopposed first,) and Motions.
Saturday . . . 8	

CHANCERY CAUSE LISTS.

Lord Chancellor.

Before and in Easter Term, 1847.

AT WESTMINSTER.

APPEALS.

S. O. G. Attorney-Gen.	{ Masters & Wardens, &c. of the City of Bristol. }	appeal
S. O. Black	Chaytor	do.
S. O. Johnson	Reynolds fur. dirs. by ord.	
S. O. Watts	Hyde	appeal
S. O. Caton	Rideout	do.
Apperley	Page	do.
The Company of Proprietors of the Grand Junction Canal	Dimes	appeal
{ Jones	Rose	do.
{ Ditto	Ditto	do.
Henderson	Eason	do.
Mason	Wakeman	do.
Dean of Ely	Bliss	do.
Cooper	Webb	do.
Lewis	Cooper	do.
Perry	Meddowcroft	appeal
	9 causes	
Blair	Bromley	do.
Rawlins	Moss	do.
Dale	Hamilton	3 appeals.
Hobson	Everett	appeal.
Law	Law	do.
Lenaghan	Smith	do.
Eversfield	Troup	do.
Allen	Knight	do.
Pearce	Pearce	do.
Dunston	Paterson	do.
Dobson	Lyll	do.
Robinson	Wall	do.
Butlin	Masters	do.

Westwood	Slater	} c.
	4 causes	
{ Dunning	Hards	} do.
{ Ditto	Ditto	
{ Smith	Barneby	} 2 appeals.
{ Winstanley	Smith	
Scawin	Watson	appeal.
{ Hodgkinson	Barrow	} do.
{ Ditto	Jackson	

Master of the Rolls.

Easter Term, 1847.

(JUDGMENTS reserved.)

Attorney-General v. Magdalen College, Oxford.
Feistel v. King's College.

Allfrey v. Allfrey.
Same v. Same.

Dormay v. Borrodaile, exceptions.

PLEAS AND DEMURRERS.

Stand over, Dean of Ely v. Gayford, six pleas.

CAUSES.

Third cause day, Walton v. Potter.

Part heard, { A. J. B. Hope v. Hope. } and petition.
 { A. J. Hope v. Same. }
 { H. J. Hope v. Same. }

S. O. to file suppl. bill, Hele v. Lord Bexley, Same
Same, exons.

Part heard, Churchman v. Capon, fur. dirs. and
sts.

Trinity Term, Hargrave v. Hargrave, fur. dirs.
d costs.

Part heard, Augurand v. Parry.

Do. Barnes v. Hastings.

Trinity { Bagshaw v. Parker. }
Term, { Same v. Same. }

To present petition, Stourton v. Jerningham.

Short { Kendall v. Granger, } fur. dirs. and costs.
 { Same v. Same, }
 { Same v. Carthew }

Part heard, Elderton v. Lock.

Third cause day, Williams v. Griffiths.

Counsel v. Ward,

Perring v. Same.

Pooley v. Majoribanks,

Same v. Walbrook.

Richardson v. Hastings.

Wheatley v. Wheatley.

Kilner v. Leach, } fur. dirs. and costs.

Same v. Day.

Gardler v. Gardler, fur. dirs. and costs.

Pattison v. Hawkesworth.

Plestone v. Cornblom.

Fryer v. Andrews.

Coles v. Forrest,

Same v. Same,

Ward v. Same.

Fortnum v. Shackel.

Syms v. Lee,

Corageo v. Same,

Same v. Vink.

Judson v. Hawkins.

Humble v. Fenwick.

Attorney-General v. Wright, fur. dirs. and costs.

Same v. Same, suppl. bill.

Same v. Corporation of Leicester, fur. dirs. and
sts.

Kirton v. Lyne, fur. dirs. and costs.

Gordon v. Abdy, ditto.

{ Webb v. Earl Shaftesbury,
Earl Shaftesbury v. Arrowsmith,
Same v. Ponsonby,
Ponsonby v. Same,
Same v. Graham,
Same v. Ponsonby,
Same v. Same,
Same v. Lord Kinnaird,
Same v. Same,
Same v. Baron de Mauley,
Same v. Kinnaird, } fur. dirs.
and
costs.
supple.

Barton v. Mills, fur. dirs. and costs.

Skipper v. King.

{ Lee v. Lockhart,
Wild v. Same,
Lee v. Hardy,
Wild v. Same,
Same v. Dawson,
Same v. Longton,
Same v. Thexton, } fur. dirs. and costs.

Fearenside v. Fearn, Same v. Kynaston.

{ Dowding v. Bartley,
Same v. Same,
Same v. Same,
Fussell v. Same,
Same v. Dowding,
Same v. Bartley,
Same v. Dowding. } fur. dirs. and costs,
and petition.

Lubbock v. Chapman, Same v. Lubbock, fur. dirs.
and costs.

Wilkinson v. Charlesworth, fur. dirs. and costs.

{ Smith v. Earl Effingham, } fur. dirs. and costs.
Same v. Same. } suppl.

Bell v. Dunmore.

Palmer v. Wright.

Dormay v. Borrodaile, fur. dirs. and costs

After Trinity Term, Hooper v. Denoon.

Attorney-General v. Gilbert

Same v. Birmingham School.

Andrews v. Bousfield.

Bourne v. Mole,

Same v. Elkington,

Same v. Same.

Attorney-General v. Birch, fur. dirs. and costs.

Same v. Pretymann, ditto.

Stand over, short, Clarke v. Samuel.

Gwynne v. Jones, fur. dirs. and costs.

{ Easum v. Easum, } Rehearing.

Buckle v. Easum,

Buckle v. Buckle,

NEW CAUSES.

{ Sheringham v. Leamon, } fur. dirs. and costs.

Same v. Potter,

Same v. Stewardson,

Daubney v. George.

Attorney-Gen. v. { Drapers' Company } fur. dirs.

{ Hendrick's Charity } & costs.

Senhouse v. Hall.

Kirkman v. Booth.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DI-
RECTIONS.

Mosley v. Alston 2 dems., pt. hd.

Beale v. Alston, dem.

Garland v. Tanner, exons.

Walsh v. Trevanion, dem.

Jackson v. Ward ditto.

{ Parker v. Day }

{ Ditto v. Gouds }

Stert v. Cooke.

7th May, Hickson v. Smith.

{ Mapp v. Elcock, } fur. dirs. and costs.

{ Ditto v. Scott, }

{ Garratt v. Lancefield, } ditto.

{ Ditto v. Drake }

Amey v. Walker, 2 causes.

Ewart v. Phillips, fur. dirs. and costs.

Woodfall v. Bagster, fur. dirs. and costs.

Gervis v. Gervis, fur. dirs. and costs.

Thompson v. Day ditto.

Attorney-General v. Wilson.

Muston v. Bradshaw

Rawlins v. Berkett, fur. dirs. and costs.

Lewes v. Lewes.

Harris v. Green, 2 causes.

Ward v. Gardiner, fur. dirs. and costs.

Sewell v. Murray, 4 causes.

Whitehall v. Sanders, 2 causes.

Grundry v. Newbold.

Brandon v. Brandon, 9 causes, exons.

Johnstone v. Ure.

Thynne v. Tooke.

Attorney-Gen. v. Wright, fur. dirs. and costs.

Fanson v. Vaughan, ditto.

Trafford v. Brooke, exons. and ditto.

Smith v. Bury and Ipswich Railway Company.

Bayden v. Watson, fur. dirs. and costs.

Clare v. Clare, 2 causes.

Goodbody v. Shuter.

Harrison v. Andrews, fur. dirs. and costs.

Monypenny v. Monypenny, ditto.

{ Ware v. Rowland } ditto.

{ Same v. Wilson, cause.

Wastell v. Leslie, 8 causes, exons. and fur. dirs.

Short, Purnall v. Morgan, fur. dirs. and costs.

Fussell v. Hooper, ditto.

Rainbow v. Lamb, ditto.

{ Cooke v. Cholmondeley }

{ Ditto v. Moore }

Sutton v. Clifford, fur. dirs. and costs.

Hackett v. Clifton ditto.

{ Clarke v. Melville }

{ Ditto v. Reckards }

Lassence v. Eager.

Governors of Christ Church Hospital v. Grainger,
by order.

Long v. Bunny, 2 causes.

Short, Perkins v. Ede, fur. dirs. and costs.

Webb v. Webb.

Byrn v. Hay.

Herring v. Hay.

Adams v. Dunn.

Quash v. Roskrage, 2 causes.

Cumming v. Bishop.

Bouverie v. Bouverie, fur. dirs. and costs.

Hiles v. Moore.

Bate v. Bate, fur. dirs. and costs.

Carpenter v. Bott, exons.

Peed v. Gee.

Munday v. Mills, fur. dirs. and costs.

Heyne v. Tyler, 2 causes.

Duke of Beaufort v. Morris.

Coffin v. Brind.

Flower v. Gould.

Edwards v. Priestly, fur. dirs. and costs.

Steward v. Forbes.

Iveson v. James.

Tinslay v. Genese.

Bourne v. Dufaur, fur. dirs. & costs.

Short, Harmer v. Bartelott.

Short, Edmonds v. Goater.

Harris v. Thomas, 2 causes.

Jarvis v. Bullas.

Short, Sala v. Macrone, fur. dirs. and costs.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

To fix a day, Sibson v. Edgeworth, 2 dems.

Mortimer v. Hartley, exons. 2 sets.

Atkinson v. Glover.

Smith v. Smith, 3 causes.

13th April, Bannister v. Ellis.

{ Kortwright v. M^cQueen. }

{ Ditto v. Barlow. }

{ Blagrave v. Blagrave, }

{ Ditto v. Ditto, }

{ Ditto v. Ditto. }

{ Hester v. Russell, }

{ Ditto v. Ditto. }

Climenson v. Hardy.

Coombs v. Brooks.

Ihler v. Davies.

Plunkett v. Coningham.

Thackwell v. Collins.

Adams v. Abbot.

Hurkisson v. Bridge.

Glenn v. Whowell.

Johnson v. Kershaw.

Feltham v. Clark.

Austin v. Dutton.

{ Clare v. Clare, }

{ Ditto v. Craig, }

{ Monro v. Lucas. }

{ Peehell v. Ditto }

{ Ditto v. Hopegood. }

{ Ditto v. Lucas. }

Evans v. Crosbie.

26th April, Bonsfield v. Mould, 2 causes.

23rd April, Milne v. Macgawran.

{ Whitfield v. Lequentre, }

{ Ditto v. Warner, }

{ Ditto v. Weston. }

13th April, Fenton v. Nalder.

Reeve v. Goodwin.

27th April, Robley v. Ridings.

Melford v. Ridout.

27th April, Teed v. Carruthers, 5 causes, fur. dirs.

3rd May, Taylor v. Thomas.

Arrow v. Mellersh.

Causes transferred from the Master of the Rolls
to V. C. Knight Bruce, by the Lord Chancellor's Order.

Woodroffe v. Devon.

{ Pennell v. Archbutt } original and

{ Same v. Same, } supple.

Purton v. Prior, fur. dirs. and costs.

{ Hedges v. Clark, }

{ Same v. Same. }

{ Hagbittle v. Hulland, }

{ Same v. Marchant, }

{ Morgan v. Parker. }

Reeve v. Frye.

{ Jones v. Evans, }

{ Same v. Same, }

{ Davies v. Jones. }

Vincent v. Lane.

Lancashire v. Lancashire.

{ Barker v. Birch, }

{ Same v. Same, }

{ Wills v. Same. }

Sagar v. Petty.

Rees v. Williams.

Smith v. Smith.

Scholfield v. Bourdieu.

Indigent Blind School v. Bird, fur. dirs. and costs.

Heming v. Archer, 5 causes, ditto.

Kendall v. Davies.
Ricketts v. Bell.
Lester v. Archdale.
Onions v. Blakemore.
Pettigrove v. Rogers, 3 causes.

Vice-Chancellor Bagiam.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Maxwell v. Kebbwhite, 2 causes.
Tolson v. Dykes, 3 causes.
Attorney-Gen. v. Florence, suppl. bill.
Menzies v. Desanges.
30th April, Williams v. Teale, 3 causes.
Thompson v. Maddy.
Dowle v. Lucy, fur. dirs. and costs.
Hicks v. Graham.
Attorney-General v. Ward.
Parlebean v. Wickham, cause and petition.
Monypenny v. Dering, fur. dirs. and costs.
{ Tennant v. Tennant, } exons. and fur. dirs.
{ Ditto v. Williams, } pt. hd.
{ Waddilove v. Taylor, } fur. dirs. and
{ Ditto v. Meader, } costs.
{ Weston v. Filer, 5 causes, } ditto.
{ Erle v. Dyson, }
{ Ditto v. Bourne. }
Day v. Wells, fur. dirs. and costs.
Shipton v. Rawlins.
Harding v. Harding.
Delves v. Rogers.
Wilkin v. Gardner, fur. dirs. and costs.
Moss v. Leigh, 3 causes, ditto.
Phillipson v. Gatty.
{ Chapman v. Plumby, }
{ Ditto v. Steward. }
Meir v. Meir, fur. dirs. and costs.
Knight v. Knight.
Sangster v. Crooks, exons. and fur. dirs.
Girdlestone v. Richards, 4 causes, exons.
23rd April, Southcomb v. Bishop of Exeter.
26th April, Williams v. Teale.
Baker v. Baker.
Nicholson v. Field.
Snowlton v. Brooks.
{ Moor v. Vardon, }
{ Same v. Lachlan. }

COMMON LAW CAUSE LISTS.

Queen's Bench.

NEW TRIALS.

Remaining undetermined at the end of the Sittings after Hilary Term, 1847.

Easter Term, 1846.

London.—The Queen v. Benjamin Parker.—Serjeant Shee.
Surrey.—Pemberton, D.D. v. Colls, D.D.—Same.
York.—Worth and another v. Gresham and another.—Dundas.
Liverpool.—Doe d. Hayward v. Tinslay—Crompton.
Chester.—Davis v. Falk—Chilton.
Chester.—Doe d. Groves v. Groves—Welsby.
Glamorgan.—Doe d. Richards and another v. Evans—Chilton.
Glamorgan.—Doe d. Bennett v. Harvey and another.—E. V. Williams.
Carmarthen.—Thomas, Esq. v. Frederick, Esq.—Chilton.
Carmarthen.—Same v. Same—E. V. Williams.
Lincoln.—Chapman v. Rawson—Whitehurst.

Stafford.—Whitmore and others, assignees; &c. v. Leak—Serjeant Talfourd.
Hereford.—Evans v. Horniatt—Huddleston.
Gloucester.—Doe d. Dyke v. Dyke.—Serjeant Allen.
Somerset.—Parnell v. Smith and others.—Butt.
Devon.—Woolmer and others v. Toby the younger—Serjeant Kinglake.

Trinity Term, 1846.

Middlesex.—Beale v. Moul's & others—Humfrey.
London.—Nicholls v. Atherstone—W. H. Watson.
London.—The Queen v. Schlesinger.—Sir F. Theisger.

Michaelmas Term, 1846.

Middlesex.—Gurney the elder v. Gurney and another—Sir F. Theisger.
Middlesex.—Collett v. Curling—W. H. Watson.
London.—Boyd v. Royal Exchange Assurance Company—Serjeant Shee.
London.—Herring v. Metyard.—W. H. Watson.
London.—Simpson v. Margitson and others.—Same.
Montgomery.—Middleton v. Bedward.—Welsby.
Carnarvon.—Davies, a pauper, v. Williams—Townshend.
Chester.—Joynson v. Garfitt—Welsby.
Notts.—Pott and another v. Flather—Wildman.
Leicester.—Hassell v. Heming—Humfrey.
York.—Lookwood v. Wood—W. H. Watson.
Liverpool.—McEwin v. Wood, the younger, and another—Knowles.
Liverpool.—Hobson and others v. Garner.—Same.
Kent.—Nunn v. Jackson—Serjeant Channell.
Kent.—Absolon v. Marks.—Peacock.
Essex.—Constable v. Martin.—Serjeant Channell.
Surrey.—Carruthers v. West.—Charnock.
Norwich.—Burton v. Scott—O'Malley.
Norwich.—Linford v. Fitzroy—Same.
Carmarthen.—Bowen v. Owen and another—W. H. Watson.
Devon.—Harrison v. Bankart—Crowder.
Cornwall.—Stevens v. Jeacocke—Cockburn.
Wilts.—Robins v. Fennell and others—Crowder.
Somerset.—The Queen v. Chorley—Serjeant Kinglake.

Tried during Michaelmas Term, 1846.

Middlesex.—Greville v. Stultz and others, in error—Barston.

Hilary Term, 1847.

Middlesex.—Richardson v. Berkley; Coules v. Simmons; Normansel v. Crefit; Doe d. Sumner v. Nash; The Queen v. Long, Esq.; Same v. Watson; Same v. Britton and others; Mountain v. Wilmott; Blundell v. Drummond; Jones and others v. Blunt and others; Gent v. Cutts.
London.—Thorn v. Boast; Penniall v. Harbone; Spinks v. Bardell; Sims v. Henderson; Henderson v. Henderson; Mitchell v. Moore.

Tried during Hilary Term, 1847.

Middlesex.—Flower v. Roaser.

SPECIAL CASES AND DEMURRERS.

Easter Term, 1847.

Wiglesworth—Dale v. Pollard, special case.
Parks.—Cobb v. Allan and another, special case.
Bebb and R.—Nicoll v. Orgill, dem.
Weymouth.—Doe dem. Renow and another v. Ashley, special case.

Sadlow and Co.—Doe v. Hawksworth v. Hawksworth, special case.

Hughes and Co.—Berkley v. Kemp, dem.

Hughes and Co.—Same v. Mackey, dem.

Townshend.—Munden v. Duke of Brunswick, dem.

Vardy.—Doughty v. Bowman and another, dem.

Stephens and H.—Leatham and another v. Simmonds and another, dem.

Whitmore and Co.—Morris, Bt., v. Duke of Beaufort, dem.

Webber.—Watling and another, executors, &c.

v. Horwood, special case.

Gregory and Co.—Ewbank v. Wood, dem.

Bush and M.—Bush v. Weiss, dem.

Beddome and W.—Spence and another v. Chodwick, dem.

Skilbeck and H.—Goddard v. Wray, dem.

Bower and S.—Fernyough v. Cursham, dem.

Gabriel and N.—Godden v. Watts, dem.

Fyson and C.—Clayton v. Hozier, dem.

Dean and Son.—Minshall the elder v. Roberts, dem.

Williamson and H.—Robson v. Oliver and another, dem.

Alger.—Doe v. Harris and others v. Taylor, special case.

Walker and Co.—Doe v. Biddulph and others.

v. Poole, special case.

Yallop.—Bownes v. Marsh, N. O. V., from N. T. paper.

Rickards and W.—Wood v. Mytton, Arrest of Judgment, from N. T. paper.

Fletcher and R.—Barker v. Jarvis, dem.

Hughes and Co.—Berkeley v. De Vear, sued, &c. dem.

Sandom.—Churchwardens, &c., of St. Nicholas, Deptford, v. Sketchley, special case.

Roy and Co.—Hale v. Riviere, dem.

Ravencroft.—Parker v. Gill, dem.

Raw.—Wilnot v. Batson, dem.

Kempster.—Hall v. Edmonds, dem.

Parkes.—Ellis and others, assignees, &c., v. Russell and others, special verdict.

Morphett.—Plumer v. Robertson, dem.

Codd.—Lamond and others v. Erlam, dem.

J. Lewis.—Lewis v. Harris, dem.

Briggs and Son.—Howard v. Clarkson, dem.

Flower.—Flower v. Newton, dem.

Same.—Same v. Macdonell, dem.

Elmslie and P.—Connop and another, executors, &c. Levy, dem.

Denton.—Williams v. Want, dem.

Williamson.—Hilton v. Whitehead, special case.

Hawkins and Co.—Malden v. Fyson, special case.

Atkinson.—Webster v. Watts, dem.

Same.—Ambridge v. Sylvester, dem.

Wire and Co.—Hills v. Croll, dem.

Johnson and Co.—Clarkson v. Glover, dem.

Barker and B.—Vigers v. Dean and Chapter of St. Paul and others, dem.

Tribe.—Bailey v. Harris, dem.

Ashley.—Sayer v. Dufaur, dem.

Dufaur.—Harvey v. Sayer, dem.

Ashley.—Groves v. Burnett and another, dem.

Everest and Co.—King v. Marman and others, dem.

Johnson and Co.—Hull v. Bainbridge, special case.

Lawrence and Co.—Barlett v. Chamberlain, dem.

Philpot.—Morrell v. Biddle, special case.

Butt.—The Right Hon. H. Hobhouse v. James, special case.

Husband and W.—Jones v. Sawkins, dem.

Lewis.—Nathan v. Lazarus, dem.

Angell.—Angell v. Harrison and others, dem.

Fyson and C.—Phillips v. Curling, award, special case.

Common Pleas.

Remanet Paper of Easter Term, 1847.

Enlarged Rules.

To 1st day.—Seaward and another v. Wright.

„ Exparte Elizabeth v. Davies.

„ Beams v. Farley.

To 6th day.—Bowyer v. Cook.

„ Oldfield v. Titterton,

New Trial of Michaelmas Term, 1845.

Cambridgeshire.—Bayley v. Bradley.

New Trial of Easter Term last.

Middlesex.—Rich v. Basterfield.

New Trials of Michaelmas Term last.

Middlesex.—Cameron v. Winch; Parsons v. Sexton; Wontner v. Shairp; Parratt v. Blunt and another; Elderton v. Emmeus, Secretary, &c.; Shaw and others v. Clarkson.

London.—Brown v. De Winton; Hartley v. Cummings & another; Hartley & another v. Cummings and another; Baker and another v. Plaskitt; Von Melle v. Higgs; Mollett v. Wackerbarth and others; Angle v. Gilpin; Maxey v. Thomas.

Herts.—Pryce v. Belcher.

Surrey.—Dawson and others v. Morrison; Stead v. Anderson; Collins v. Newstead; King v. Norman; Couling v. Cox.

Liverpool.—Tuckey, executor, v. Hawkins; Winch and others v. Hamilton and another.

Newcastle.—Lambert and another v. Knill.

Devon.—Young v. Grove.

Cornwall.—Ricketts and others v. Bennett and another; Doe Lord v. Craggs; Coode v. Cayzer.

Derby.—Cox, surviving, &c. v. Glue; Same v. Saint; Same v. Mousley; Batho and another v. Batthyany.

Warwick.—Valpy and others, assignees, &c. v. Sanders and another; Furniell v. Tedd.

New Trials of Hilary Term last.

Middlesex.—Doe (Miller) v. Claridge; Varney v. Hickman; Stroeter v. Bartlett.

London.—Hitchin v. Groome; Smith and others, assignee, v. Watson; Gray and another v. Lander; Miles v. Pope; Beaumont v. Brengeri; Brown v. Chapman; Baker v. Sayer; Ardlington v. West.

CUR. AD VULT.

Patteson and others v. Holland and others.

To stand over till the sci. fa. in Queen's Bench is disposed of.

Nias v. Davies, Esq.

Brown and others v. Mullett.

Dixon the younger v. Clark and another.

Phillips and another v. Navine and another.

Demurrer, Paper of Easter Term, 1847.

Thursday . April 15

Friday . . . 16

Saturday . . . 17

Monday . . . 19

Tuesday . . . 20

Wednesday . . . 21

} Motions in arrest of judgment.

} Special arguments.

Richardson v. Tubbs, Esq.

Crompton v. Hunter.

Cundell and another v. Dawson.

Jull and another v. Viscount Curzon.

Battershell and others v. Bishop of Winchester.

Ring and others v. Newman.
 Fearn v. Cochrane.
 Capel and others v. Jones.
 Wunt v. Shaw.
 Webb v. Hurrell.
 Plenty v. West.
 Sharland v. Loifchild.
 Valpy and others, assignees, v. Gibson and another.

Wright v. Hutchison.
 Mortimer v. Gell.
 Harris v. Marten, sued, &c.
 Parsons v. Gingell.
 Lewis v. Gingell.
 Ingram v. Hoskins.
 Harrison v. Cotgreave.
 Logan v. Hall and another.

Thursday . . .	April 22	
Friday . . .	23	Special arguments.
Saturday . . .	24	
Monday . . .	26	
Tuesday . . .	27	
Wednesday . . .	28	Special arguments.
Thursday . . .	29	
Friday . . .	30	Special arguments.
Saturday . . .	May 1	
Monday . . .	3	
Tuesday . . .	4	
Wednesday . . .	5	
Thursday . . .	6	
Friday . . .	7	
Saturday . . .	8	End of Term.

Exchequer.

Sittings in Easter Term, 1847.

Thursday . . .	April 15	{ <i>Banc.</i> Peremptory Paper after Motions. Ditto, before Motions. — <i>Nisi Prius</i> , Middlesex 1st Sitting.
Friday . . .	16	
Saturday . . .	17	
Monday . . .	19	
Tuesday . . .	20	
Wednesday . . .	21	{ <i>Banc.</i> Special Paper (demurrers). <i>Nisi Prius</i> , London 1st Sitting.
Thursday . . .	22	
Friday . . .	23	{ <i>Banc.</i> Special Paper (cases). — <i>Nisi Prius</i> , Middlesex 2nd Sitting.
Saturday . . .	24	
Monday . . .	25	{ <i>Banc.</i> Special Paper, (demurrers). <i>Banc.</i> Errors.
Tuesday . . .	26	
Wednesday . . .	27	<i>Banc.</i> Special paper, (cases).
Thursday . . .	28	
Friday . . .	29	
Friday . . .	30	{ <i>Banc.</i> Special Paper, (demurrers). — <i>Nisi Prius</i> , London 2nd Sitting.
Saturday . . .	May 1	
Monday . . .	3	{ <i>Banc.</i> Special Paper (cases). — <i>Nisi Prius</i> , Middlesex 3rd Sitting.
Tuesday . . .	4	
Wednesday . . .	5	
Thursday . . .	6	
Friday . . .	7	
Saturday . . .	8	

Exchequer of Pleas.

PEREMPTORY PAPER.

For Easter Term, 1847.

To be called on the first day of the Term, after the

motions, and to be proceeded with the next day, if necessary, before the motions.

Rule Nisi.

24th Nov. 1846.—In the matter of arbitration between Charles Keene and others.—Mr. Watson, Attorney-Gen.

24th Nov. 1846.—Orgill v. Ball.—Mr. Serjeant C. Jones, Mr. Crouch.

28th Jan. 1847. — Bevington v. Griffith. — Mr. Crompton, Mr. Macaulay.

22nd Jan. 1847.—Hill v. Brown.—Mr. Lush, Mr. Petersdorff.

18th Jan. 1847.—Buxton v. Polhill.—Mr. Lush, Mr. Udall. *

SPECIAL PAPER, CASES.

Remanets from Hilary Term, 1847.

For Judgment.

Spry v. Gallop.

(Heard 18th Jan. 1847.)

For Argument.

Doe d. Knight v. Chaffey, jun. and another, by order of *Nisi Prius*.

(25th Jan. 1847, part heard, case to be amended.)

Lewis v. Puxley, by order of Vice-Chancellor Knight Bruce.

Evans v. Upsher, by order of Mr. Baron Alderson.

Holford v. Body, pursuant to award.

Hammond v. Peacock, by order of Mr. Baron Alderson.

Harris v. Wall, by order of *Nisi Prius*.

Clayton, executor, &c. v. Haugh and others, by order of Mr. Justice Cresswell.

Sanderson v. Dobson, by order of the Master of the Rolls.

Doe d. Hutchinson v. Whittome, by order of Mr. Baron Alderson.

Newnham v. Coles, clk.—by order of *Nisi Prius*.

Wilson v. Eden, Bt., and others, by order of the Master of the Rolls.

Hall v. Lach, by order of *Nisi Prius*.

Doe d. Adams v. Bridger, by order of *Nisi Prius*.
 Baddeley, clk. v. Gingell, by order of Baron Parke.

Doe d. Burton v. White, by order of *Nisi Prius*.

Doe d. Knight v. Spencer, Ditto.

Harries v. Hooper, Ditto.

Lee v. Stone and others, by order of V. C. Knight Bruce.

Taylor v. Dawson, Esq., by order of *Nisi Prius*.

Salkeld, clk. v. Johnstone and others, by order of the Lord Chancellor.

Galloway and another v. Cole, by order of *Nisi Prius*.

SPECIAL PAPER, DEMURRERS.

Remanets from Hilary Term, 1847.

For Judgment.

Jones v. Jones and others.

(Heard 27th Jan., 1847.)

Carter v. Flower.

(Heard 15th Feb., 1847.)

Tattersall v. Parkinson.

(Heard 15th Feb. 1847.)

For Argument.

Duncan v. Benson.

Griffiths v. Pike.

(To stand over until special case settled.)

De Beauvoir v. Rushout, surviving executrix, &c.

Washbourne v. Burrows.

Bromage and another v. Lloyd and another.

Duke Knt. and others v. Dive.

Galsworthy v. Strutt.

NEW TRIAL PAPER.

For Judgment.

Ruthin, Lord Denman.—Doe d. Hall and ux.
v. Mouldsdales—Attorney General.
 (Heard 9th Feb. 1847.)

(Heard 9th Feb. 1847.)

(Heard 10th Feb. 1847.)

(Heard 11th Feb. 1847.)

(Heard 12th Feb. 1847.)

(Heard 12th Feb. 1847.)

(Heard 13th Feb. 1847.)

For Argument.

Moved Easter Term, 1846.

Moved Michaelmas Term, 1846.

York, Mr. Justice Wightman

Moved after the 4th day of M

1846.

Middlesex, Mr. Baron Platt.—*Ivimey v. Marks*
—*Peacock.*

Moved Hilary Term, 1847.

Middlesex, Lord Chief

Middlesex, Lord Chief Baron.—Bowditch v. Sayer
—Humfrey.

Middlesex, Lord Chief Baron.—Asprey v. Levy—Humphrey.

Moved after the 4th day of Hilary Term, 1847.

Moved after the 4th day of Hilary Term, 1847.

Middlesex, Mr. Baron Rolfe.—Semple the younger
v. *Pink.*—Mr. Miller.

PROCEEDINGS IN PARLIAMENT RE-
LATING TO THE LAW.

Drainage of Lands. In Committee.

The Roman Catholic's Bill has been negatived.

It is very generally expected that the sessions will close early in June, and a general election speedily follow.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 24, 1847.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

PROPOSED AMENDMENT OF THE LAW OF ARREST ON MESNE PROCESS.

THE increasing desire of the trading and commercial community for the re-establishment of a modified law authorising the arrest of debtors on mesne process, is ingeniously attempted to be met and parried by a device the futility of which will become transparent as soon as it is examined into. The act 1 & 2 Vict. c. 110, abolishing arrest for debt on mesne process, and the more recent statute, (7 & 8 Vict. c. 96,) which abolished imprisonment for debt on final process, where the debt does not exceed 20*l.*, are complained of, as depriving creditors of the most stringent, and, in many cases, the *only* effective remedy for the recovery of debts from fraudulent and dishonest persons. The Lords Brougham and Campbell, through whose instrumentality the measures which have produced such general dissatisfaction were respectively inflicted on the country, now concur in proposing as a remedy for the grievance, that the power given to the judges of the superior courts to order the arrest of parties who are about to quit the country, should be shared by the newly-appointed judges of the County Courts!

To suppose that this insignificant alteration in the mode of procedure affords an adequate remedy for the evil complained of, or an effective substitute for the power taken from the creditor when arrest for debt was abolished, is preposterous. If there were a judge in every parish, accessible every day in the week, and during every hour of the twenty-four, with power to

order the arrest of every debtor who was proved on oath to be about to quit the country, it could not materially augment the number of persons arrested, or confer any perceptible advantage on creditors. It may be, and we believe is, the fact, that the number of arrests under judges' orders has gradually multiplied, and that the number of writs of *capias ad respondendum* issued during the last year greatly exceeded the proportion of any year subsequently to the year 1838, when arrest on mesne process was abolished. All this proves is, that creditors, with a knowledge that the arrest of the debtor frequently leads to a speedy settlement of the claims upon him, resort to this procedure as often as the law allows. It is to be feared that a keen perception of the advantages derivable from securing the person of a shuffling debtor, too often induces unscrupulous persons to invent or colour circumstances in such a manner as to cause a judge, upon an *ex parte* application, to believe there is reasonable ground for supposing that a defendant meditates a departure from the kingdom, when, in truth, the defendant has never entertained such an intention. The judges occasionally indicate their own opinions that they have been misled or imposed upon in the first instance, and rescind the orders made by them, after an opportunity has been afforded for hearing the debtor. In other cases this power is exercised by the court, upon appeal from the judge's order.*

These cases, however, are singular and

* See *Gibbons v. Spalding*, 11 M. & W. 173; *Talbot v. Bulkeley*, 16 Law J. 68, Exch.; 33 L. O. 307.

exceptional. If any Member of either House of Parliament would move for a return of the writs of *capias* issued under the judges' orders, the number would prove comparatively insignificant. The law is only applicable to a small and peculiar class of cases. The great proportion of debtors, unable or unwilling to meet their liabilities, have no means of leaving, and never contemplate leaving England. Any tradesman who has the moral courage to look through the list of bad debts standing in his books, can ascertain how small a proportion of his debtors have quitted England. The profligate, who calls himself a gentleman because he has done nothing to obtain an honest livelihood, whose resources are not quite exhausted, or who expects to live upon the generosity of affluent relatives, may change his place of domicile without any serious inconvenience. The artificer, the tradesman, the shopkeeper, the clerk, the merchant, the professional man, who incurs pecuniary obligations he is unable to fulfil, does not think of quitting England in consequence, in one case out of every thousand. To the classes enumerated, and many others, the prospect of a compulsory residence in a foreign country has more terror than the most inveterate hostility of creditors could produce. If creditors cannot be wheedled or forced into a composition, the Court of Bankruptcy, or the Insolvent Court, is easy of access, and a debtor with ordinary ingenuity and foresight, has more than an average share of ill-fortune, if he stumbles over any very formidable obstacles in his passage through the one court or the other. The class of fugacious debtors, therefore, is proportionably small, and of these the number artless enough to give creditors timely notice of an intention to decamp, so as to enable the creditor to take measures to obtain a judge's order, is necessarily extremely limited. If increased facilities were really afforded, therefore, for arresting debtors who could be proved to contemplate a departure from England, it would produce little or no effect.

It may be fairly questioned, however, whether the proposed amendment does afford any increased facilities? The application is now made to a judge at chambers, who sits at Sergeants' Inn every day throughout the year, except on Sundays and holidays. The judges of the County Courts hold their sittings at different towns in their respective districts, at irregular periods, and when not actually engaged in

the performance of judicial duties, the act under which they have been appointed neither contemplates nor requires a residence within the district to which their jurisdiction is limited. Taking into account the rapidity with which communications can now be exchanged between the most distant parts of England and the metropolis, we incline to think, that, in general, more time would be lost by an application to one of the County Court judges, than by applying in the usual course to a judge at chambers. In the one case, the application is certain to be entertained on the day it is made: in the other, the absence of the judge, or the pressure of other engagements, would probably lead to a postponement of its consideration. In any event, the change, to be in the slightest degree effective, must be more extensive than seems at present to be contemplated. Under the present law, the judge's order for a *capias* only authorises the issue of a writ, and the writ itself issues under the seal of one of the superior courts. The writ is addressed to the sheriff, and executed by his officer, and the defendant, when arrested, may give a bail bond to the sheriff, or make a deposit of the sum indorsed on the writ, with ten pounds for costs. Special bail must then be put in and perfected in the superior court. If the order for arrest is to be made by the judge of the County Court, we presume it is intended that the writ is to issue from that court, to be addressed to, and executed by, the bailiff, and that all the proceedings in relation to bail must take place in the County Court.

Even then, however, the instrumentality of the superior courts could not be dispensed with. According to the present practice, an action must be commenced, that is to say, a writ of summons must issue, before the application is made to order the arrest of a defendant. Is the issue of the writ to be dispensed with, or are the County Courts to have authority to issue writs of summons in actions to be commenced and proceeded with in the superior courts? The power of arresting a defendant about to quit England is now confined to cases in which the plaintiff's claim amounts to 20*l.* or upwards. Is it proposed that the County Courts should issue writs in cases exceeding that amount? If it is not meant to endow the County Courts with authority to issue writs for the superior courts, the alteration suggested will introduce this anomaly in practice.

that although a judge of the County Court may grant an order for the issue of a *capias* in the country, a writ of summons must previously be obtained in town.

The alleged necessity for all these novelties in practice is, that parties who desire to obtain the orders of judges to arrest defendants about to quit England, are now compelled for this purpose to leave their homes and occupations, and come at great expense and loss of time to the metropolis. According to the newspaper reports, this was gravely stated by Lord Brougham, in the House of Lords, upon the presentation of certain petitions in reference to the proposed amendment. It is scarcely necessary to inform our readers that the supposed grievance has no foundation whatever in fact. In practice no one is compelled to leave his home. The judge who grants an order for a writ of *capias* does not examine witnesses *vivâ voce* to satisfy himself that there is probable cause for believing the defendant is about to quit the kingdom. Affidavits are laid before him, upon the sufficiency of which he decides that there is or is not ground for ordering the *capias* to issue. In country causes those affidavits may be, and in practice uniformly are, sworn before a commissioner of the court living in the neighbourhood of the witness, they are forwarded by the country attorney to his town agent, and the inconvenience and expense so loudly complained of by the petitioners, and so feelingly described by Lord Brougham, are purely imaginative! The petitions, and the statements made on their presentation, were probably only intended to divert attention from that really important question, the restoration of arrest on mesne process. We shall be greatly mistaken, however, if this "poor device" proves, to any considerable extent, successful.

PRACTICE IN THE NEW COUNTY COURTS.

A CORRESPONDENT has directed our attention to a reported decision of Mr. Koe, the judge of the County Court at Hertford, at a court holden on the 13th April last. According to the report, the plaintiff's attorney called the plaintiff as a witness on his own behalf, and the learned judge rejected his testimony, on the ground that although the act contemplated that either party might be examined at the instance of his adversary, it was not intended that parties should be admitted as witnesses to

prove their own cases. It was also stated, that in a subsequent case, the learned judge ruled, that the same principle was applicable to the wives of the parties respectively, and therefore refused to allow the wife of the defendant to be sworn, when she was tendered as a witness on behalf of her husband.

If the matter were *res integra*, we should think the learned judge's decision on this question,* not only reasonable, but judicious.^b We are satisfied, if the rule of practice laid down by him were universally adopted, it would operate advantageously, by preventing the obligation of an oath from being treated as lightly as we fear it will be when the County Courts Act comes fully into operation. The view Mr. Koe has taken, so far as it involves the consideration of what is right and expedient, we have reason to know, is that acted upon generally by professional arbitrators, and which has been expressly approved of by some of the common law judges when the exercise of an arbitrator's discretion in this respect, has been brought under the consideration of the courts. The ordinary form of submission to arbitration, however, expressly invests the arbitrator with a discretion to examine the parties, or either of them, if he shall think fit. But the County Courts Act, as it appears to us, leaves no such discretion in the judge. The 83rd section enacts, that "on the hearing or trial of any action, or of any other proceeding under this act, the parties thereto, their wives and all other persons, may be examined either on behalf of the plaintiff or defendant, upon oath, or solemn affirmation," &c. If the word "may" in this section is to be read as if it were "shall," a construction which has prevailed in many cases, it appears to us that a judge could not refuse to hear the evidence of a plaintiff or defendant in support of their respective cases. If the plaintiff or defendant is admissible, the testimony of the wife of the one or the other could not, of course, be excluded. It would be a very salutary rule, however, to reject the evidence of either plaintiff or defendant, when the one or the other acted as his own advocate, and sought to be heard in the duplicate character of counsel and witness. Our readers are aware, that it has very recently been determined,^c that an attorney

^b See observations on the examination of the parties, *ante*, p. 407.

^c See *Stones v. Biron*, Leg. Ob. vol. 33, p. 141; *Dunn v. Parkwood*, *ibid.* 323.

who has addressed the jury as an advocate, cannot be examined as a witness on behalf of his client, and a fortiori, a party to the cause should not be permitted to confound the two functions. Our correspondent inquires, whether there is any remedy, if the judge of the County Court has taken an erroneous view of the act, in refusing to hear the evidence of the plaintiff or defendant in a cause brought before him for adjudication? We are not certain whether the Court of Queen's Bench, by virtue of its general superintendence over the proceedings of inferior jurisdictions, might not grant a mandamus directed to the judge of the County Court, commanding him to hear the evidence. There would be great practical difficulty, however, in inducing the Court of Queen's Bench to interfere in such a case; and if this remedy is not available to a party aggrieved by the decision of a judge of the County Court, we know of no other. It has been repeatedly observed that the act gives no appeal, a defect the consequences of which will soon become manifest.

POINTS IN COMMON LAW.

ADMISSION OF UNSTAMPED DOCUMENTS IN EVIDENCE.

THE provision of the Stamp Act excluding a document requiring a stamp from being received in evidence when unstamped, although necessary for the protection of the revenue, often operates injuriously and unjustly as regards individuals, especially in cases of fraud where written instruments not properly stamped furnish the means by which frauds are effected on ignorant persons. Fortunately for the purposes of justice, the courts look to the purpose for which an unstamped instrument is tendered, and do not refuse to receive unstamped documents as evidence which are not put forward as binding or available between the parties, but are merely tendered for a collateral purpose. The distinction adopted by the courts in this respect has been so concisely and succinctly stated in a passage to be found in the judgment delivered by Lord Denman, in a late case of *The Queen v. Gompertz and others*,^d that we copy it from the report. In this case, which was an indictment for a conspiracy, the prosecutor ac-

cepted various bills of exchange upon the condition that the defendant, Gompertz, would give him a warrant of attorney for the sum for which he had rendered himself liable by such acceptances. The warrant of attorney was accordingly given, and was tendered at the trial, not to prove that Gompertz had given the prosecutor a valid security, but to confirm his statement that Gompertz had given him what purported to be a security, and which when produced appeared to have been signed by Gompertz. The warrant of attorney was unstamped, and therefore objected to, but the objection was overruled. Upon an application for a new trial, on the ground that the evidence was improperly received, the point was fully discussed, and the court unanimously confirmed the ruling of the Lord Chief Justice at the trial. The general rule is thus stated in the judgment:—

"Where the object of the evidence is, not to enforce or set up the instrument as a valid instrument, but merely to show that it was part of a scheme of fraud, and so to use it for a purpose collateral to the object apparent upon the face of it, there are many cases in which it has been held, that a written instrument requiring a stamp but unstamped is admissible. On the other hand, if there be any allegation to the proof of which an instrument available in law is necessary, or if it be tendered as such instrument—unless, as in forgery, it be itself the subject-matter of the charge—then it cannot be received unstamped, if of a nature requiring a stamp."

The distinction thus pointed out has been established in several cases,^e but we are not aware that it has ever before been so clearly and forcibly stated. A distinct appreciation of the principle upon which the courts proved, in admitting or rejecting evidence of this nature, will tend at once to lighten the responsibility of the practitioner, and diminish the uncertainty which must always in some degree attend the administration of justice at *nisi prius*.

NOTICES OF NEW BOOKS.

The Modern Orator, comprising the most celebrated Speeches of the Earl of Chatham, the Right Hon. Richard Brinsley Sheridan, Lord Erskine, and the Right

^e See *The King v. Fowle*, 4 Car. & P. 598; *Keable v. Payne*, 8 Ad. & El. 555; and *Oppoek v. Bower*, 4 Mees. & W. 361.

^d Vide Law J. vol. 16, p. 121, Q. B.

Hon. Edmund Burke. London: Aylott & Jones. 1847. Pp. 868.

THE present age is not distinguished either at the bar or in the senate for oratorical eminence. There are solid and acute reasoners, fluent and able speakers, and practised and sarcastic debaters, but scarcely any examples of commanding eloquence, or even great rhetorical skill. It may be true that the occasions on which the highest order of eloquence would be appropriate do not frequently arise either in parliament or the courts, but there are a multitude of subjects capable of exercising the skill of the rhetorician.

No doubt several of our public men possess the talents requisite for constructing an oration displaying all the arts of rhetoric, and some few are endowed with the rare capacity of touching the feelings, and for a time subduing the understanding by the highest kind of eloquence; but they are seldom induced to display even a specimen of their powers. It seems to be a prevalent opinion, that the master-pieces of eloquence which distinguished a former age would now be out of place. Statistics, political economy, and matters of fact have superseded tropes and figures, and appeals which are calculated to fill the purse are preferred to those which fill the imagination or affect the heart.

Although there are objects to be attained sufficiently noble to demand the exercise of the loftiest powers of the orator, there seems no encouragement for the devotion of so much thought and study as would be necessary to prepare a great and finished oration.

Whether the decline of eloquence is to be ascribed to the change in the public taste, or to the neglect of public speakers to exert their powers, we deem it a laudable effort, at all events, now and then to recall attention to the best specimens of British oratory. The enterprising publishers of the volume before us are therefore entitled to every encouragement which the press can afford. The editor of the "Modern Orator" has made a judicious selection from the best speeches of the last age, including the imperious and impassioned harangues of Chatham,—the glowing and brilliant rhetoric of Sheridan,—the lofty and philosophic eloquence of Burke,—and that rare combination of powerful reasoning and touching eloquence which distinguished Erskine. The selections from the speeches of that great advocate, extending over a considerable space of time,

will particularly attract the professional reader. The subjects of these forensic efforts were as follow:

The case of Captain Baillie, for libel, in 1778; the trial of Lord George Gordon, for high treason, in 1781; the case of the Dean of St. Asaph, for seditious libel, in 1784; the trial of John Stockdale, for libel, in 1789; the trial of John Frost, for sedition in 1793; and the trial of Thomas Hardy, for high treason, in 1794.

In the second edition of that part of the work which comprises Lord Erskine's speeches, the editor has added those which were delivered on the trial of Hadfield, for high treason, in 1800; and on the trials of *Howard v. Bingham*, in 1794, and *Markham v. Fawcett*, in 1802, both for crim. con.

From the speeches of the Earl of Chatham the selection comprises most of the great subjects which interested the public from 1786 to 1778. From those of Mr. Sheridan, the most conspicuous are those on the impeachment of Warren Hastings, from 1786 to 1788. Those of Mr. Burke, (amongst others,) are on American taxation and colonies, in 1774-5; on political reform, in 1780; the India Bill, in 1783; and on the impeachment of Warren Hastings, in 1788.

TRANSFER OF CHANCERY CAUSES.

THE following Causes standing in the List of the Vice-Chancellor of England, (except such as the parties concerned may wish to have retained in his Honour's List, on the ground that briefs have been delivered to and consultations held with counsel practising only in the Vice-Chancellor of England's Court,) will be transferred to the Vice-Chancellor Sir James Wigram, on Saturday the 24th instant.

Evans v. Crosbie.	
{ Clarke v. Melville. }	
{ Ditto v. Rickards. }	
Lassence v. Eager.	
Governors of Christ Church Hospital v. Grainger.	
{ Long v. Bunny, }	
{ Same v. Same. }	
Webb v. Webb.	
Herring v. Hay.	
{ Adams v. Dunn. }	
{ Same v. Same. }	
{ Quash v. Roskrage, }	
{ Same v. Same. }	
Cuming v. Bishop.	
Peed v. Gee.	
{ Heyne v. Tyler. }	
{ Same v. Same. }	
Duke of Beaufort v. Morris.	
Flower v. Gould.	

Registrar's Office, April 19, 1847.

ATTORNEYS' CERTIFICATE DUTY.

PETITIONS for the repeal of this really unprincipled impost, are still occasionally presented. We know that a large number are in readiness, but are delayed on account of the peculiar circumstances of the time. The last petition came from the attorneys and solicitors of Lincoln and was presented by Colonel Sibthorpe.

ANALYTICAL DIGEST OF CASES,

[REPORTED IN ALL THE COURTS.]

Courts of Common Law.

PRACTICE.

PAUPER.

1. A plaintiff suing in *formâ pauperis*, and conducting himself vexatiously, may be called upon by the same rule to show cause why he should not pay the costs of the day for not proceeding to trial, as well as be dispaupered. *Bedwell v. Coulstring*, 3 D. L. 767.

2. The court compelled a pauper to pay the costs of the day for not proceeding to trial pursuant to notice, the cause of his default being a mistake of his attorney's clerk in preparing the process. *Hodges v. Tophis*, 3 D. & L. 786.

PAYMENT INTO COURT.

What assault not within exception.—In trespass for breaking and entering plaintiff's house and assaulting his son, by means whereof plaintiff lost his son's service, the defendant may pay money into court under stat. 3 & 4 W. 4, c. 42, s. 21, the action not being "for assault and battery," within the excepting clause of the section. So held by the Court of Exchequer Chamber, affirming the judgment of the Court of Queen's Bench. *Newton v. Holford*, 6 Q. B. 921.

PRISONER.

A prisoner, who, at the time of a vesting order made by the Court of Insolvent Debtors, on the petition of a creditor, was entitled to his discharge, on the ground of the lapse of a year without the plaintiff's having declared against him, is entitled to his discharge, notwithstanding the 41st sect. of 1 & 2 Vict. c. 110. *Hallett v. Cresswell*, 3 D. & L. 561.

PROCHEIN AMI.

Where an infant plaintiff was of too tender years to be able to write, the court granted her petition to sue by her father as her *prochein ami*, on its being signed by him for her in her name. *Eades v. Booth*, 3 D. & L. 770.

PROVISIONAL COMMITTEE.

Several actions.—*Staying proceedings.*—Where the same plaintiff brings separate actions against several members of a railway provisional committee, the court will not stay the proceedings in each of such actions, except the

one with which the plaintiff should elect to proceed. *Giles v. Tooth*, 33 L. O. 142.

PROVISIONAL DIRECTORS.

Stay of proceedings.—Where a plaintiff for the same cause of action sues three provisional directors of a railway company at the same time in separate actions, and the attorney who appeared for all the defendants makes an affidavit that the causes of action, if any, are joint, and not separate, the court set aside a judge's order directing that all proceedings in the two last actions should be stayed till further ordered. *Newton v. Chambers*, 33 L. O. 113.

QUO WARRANTO.

On writ of error in the Exchequer Chamber, upon judgment on a *quo warranto* information, the party in whose favour the Court of Error decides is not thereby, and by stat. 11 G. 4, and 1 W. 4, c. 70, s. 8, entitled to enter up a judgment of that court for his costs in error. *Rowley v. The Queen*, 6 Q. B. 668.

RELEASE.

Setting aside plea of release by co-plaintiff.—The court will not set aside a plea of a release by one of several co-plaintiffs, unless it is clearly shown to have been made in fraud of the other plaintiffs, or unless the releasor be a mere nominal party to the action, having no interest whatever in the subject matter of it. *Rawstorne v. Gandell*, 15 M. & W. 304; S. C. 3 D. & L. 682.

Case cited in the judgment: *Phillips v. Claggett*, 11 M. & W. 84.

REPLICATION.

In trespass for false imprisonment, the defendant justified under a *ca. sa.* issued on a judgment obtained against the plaintiff. Replication, that the judgment was signed on a warrant of attorney, and that the judgment and *ca. sa.* were set aside by a judge's order, which was afterwards made a rule of court; on the ground that the warrant of attorney was never delivered as a complete authority to do or suffer any of the acts therein specified, but as an escrow to be kept by the plaintiff in his own possession till a certain event should happen; that the defendant, by improper contrivance, obtained and kept possession of it, without the plaintiff's consent: *Held*, 1st, that the replication was good, as it sufficiently appeared that the judgment was set aside, not on the ground of its being erroneous, but on the ground of irregularity, or want of good faith; 2ndly, that it was not necessary to allege that the order was made a rule of court before the commencement of the suit; 3rdly, that *nul tiel record* was not the proper replication to such plea. *Brown v. Jones*, 3 D. & L. 678; S. C. 15 M. & W. 191.

RULE TO COMPUTE.

Sequestrari facias.—Judgment for the plaintiff on demurrer having been signed in an action of covenant against the defendant as sequestrator, who was bound to pay over to the plaintiff all such sums as should be received by him in his character as sequestrator, in satisfac.

tion of a debt owing to the plaintiff, the court refused to refer it to the Master to compute the amount of damages to which the plaintiff was entitled. *Smith v. Nesbitt*, 3 D. & L. 420; S. C. 2 C. B. 288.

RULE NISI.

A rule to discharge a rule absolute for a new trial on payment of costs, is in this court a rule nisi, which makes itself absolute unless cause be shown against it within the time limited. *Phillips v. Warren*, 14 M. & W. 730; S. C. 3 D. & L. 301; 32 L. O. 588.

SCIRE FACIAS.

A writ of *sci. fa.* will issue to revive a judgment, although more than 20 years have elapsed since it was signed, if payments within that time have been made on account of it. *Williams v. Welch*, 3 D. & L. 565.

SERVICE OF RULE.

An affidavit of service of a rule to compute stated the service to have been on A. B., "who acts as the attorney or agent of the defendant in the cause:" *Held*, sufficient. *Patrick v. Richards*, 3 D. & L. 573.

SERVICE OF WRIT.

1. *Public company.—Appearance.*—The word "clerk" in the 8th section of the Uniformity of Process Act means clerk to the corporation; therefore, the court will not allow an appearance to be entered for a public company upon affidavit that the writ has been served on a clerk at the office of the company, and that it had come to the knowledge of the secretary.

The court will not in any case dispense with personal service of a writ of summons. *Walton v. The Universal Salvage Company*, 33 L. O. 308.

2. *Setting aside.*—The court set aside the service of a writ of summons, the defendant being described therein as of "Bristol, in the county of Gloucester," and the service having taken place in the city of Bristol, in a place not within the county of Gloucester, or within 200 yards of the boundary. *Levi v. Perratt*, 2 C. B. 345.

SHERIFF.

1. *Possession-money, what is.*—The term "possession-money" does not include the expense of the keep of cattle seized by the sheriff. *Gaskell v. Sefton*, 14 M. & W. 802; S. C. 31 L. O. 77; 3 D. & L. 267; 32 L. O. 153, 540.

2. An attachment having issued against the sheriff for not bringing in the body, the same was ordered to be set aside, on payment of costs and perfecting special bail. Those terms not having been complied with, a habeas issued directing the coroner to bring up the body of the sheriff. The under-sheriff then paid to the plaintiff the amount of the penalty of the bail bond (being double that of the debt) and costs. *Held*, that the plaintiff was only entitled to retain the sum indorsed on the writ and costs. *Reg. v. Sheriff of Middlesex*, 3 D. & L. 472, S. C. 15 M. & W. 146.

3. Where an under-sheriff, before whom a writ of inquiry is executed, certifies, under the

3 & 4 Vict. c. 24, s. 2, he may do so in the name of the high sheriff; and *semble*, that it ought to be signed in his own name. *Stroud v. Watts*, 3 D. & L. 799.

SPECIAL JURY.

A cause having been set down for trial in Middlesex, and a rule obtained for a special jury, the parties agreed that the venue should be changed to London, and the cause tried by a special jury there, and that all costs occasioned by that arrangement should be costs in the cause. The cause came on for trial in London, and was referred to arbitration, the arbitrator to have the same power to certify as a judge at *nisi prius*. The award was made on the 6th of August, and after the first four days of the following term, the arbitrator certified for a special jury: *Held*, 1st, that the certificate was too late; 2ndly, that the successful party was entitled to the additional costs of the special jury occasioned by the change of venue from Middlesex to London. *Geeve v. Gorton*, 3 D. & L. 481.

STAYING PROCEEDINGS.

1. *Equitable grounds.*—A. assigned to B. by way of security for a loan of 10,000*l.*, two sums of 5,000*l.* each, due from C. to A. under two several indentures, and afterwards brought debt against C. upon those indentures. The court refused to stay the proceedings in the action at the instance of B. & C., and suggested that the proper course was to apply after judgment to stay execution. *Seppings v. Nokes*, 2 C. B. 292.

2. An action was brought by a wife against her husband, on a settlement deed, in the name of the trustee under that deed. The court refused, on the application of the defendant, to set aside the proceedings on the ground that the action was brought without the authority of the trustee, it appearing that an application had been made to the trustee to consent to her name being used, and an indemnity against costs offered to her, which she had refused, without assigning any reason. *Auster v. Holland*, 3 D. & L. 740.

TRIAL.

Withdrawal of juror.—Where, upon the trial of a cause, a juror is withdrawn by consent of counsel, if the plaintiff afterwards bring another action for the same cause, the court will stay the proceedings. *Gibbs v. Ralph*, 14 M. & W. 804; S. C. 31 L. O. 247; 32 L. O. 198.

Case cited in the judgment: *Sanderson v. Naylor*, Ry. & M. 402.

VARIANCE.

"In consideration of advances made and to be made, by T. C. and S. C.," "or by any other persons of whom their firm may from time to time consist, to F., we jointly and severally hereby guarantee to the said T. C. and S. C. the repayment of the said advance, and to indemnify them against any loss by reason of such advances, our liability not to exceed the sum of 1,000*l.* This guarantee to be a con-

tinuing guarantee, and to be a security to the said T. C. and S. C. to the extent of 1,000*l.* as aforesaid, for the whole of any balance which may from time to time, or at any time, become due to the said T. C. and S. C., or to the persons for the time being constituting the firm of the said banking house." *Held*, that this guarantee disclosed a good consideration for the promise to pay past as well as future advances, the future advances having been made, T. C. and S. C. declared upon this guarantee, and alleged that past advances had been made, and that in consideration of the advances so made, and that the plaintiffs would, from time to time make advances to F., the defendant and one H. jointly and severally guaranteed to the plaintiffs the repayment of the said last-mentioned advances, that the said guarantee shall be a continuing guarantee to the extent of 1,000*l.* for the whole of any balance which might become due to the plaintiffs, or to the persons for the time being carrying on the said trade or business. The declaration then averred that advances were afterwards made by the plaintiffs to F.: *Held*, 1st, that there was a variance in the statement of the consideration, as it was the making advances by the plaintiffs, or any persons who might constitute the firm; 2ndly, that there was a variance in the statement of the promise, it being to pay what might be due to the plaintiffs, or those persons who might constitute the firm; 3rdly, that those variances might be amended by a judge sitting at *nisi prius*; 4thly, that a term in a special case that the court should be at liberty to amend any part of the proceedings as they might think proper, gave no additional power beyond that possessed by a judge at *nisi prius*. *Chapman v. Sutton*, 3 D. & L. 646.

VENUE.

1. The 5 & 6 W. 4, c. 76, s. 109, places the cities therein named in the same position as if they had not been excluded by the 38 G. 3, c. 52, s. 10, from the operation of the 1st section of that act. *Cole v. Gane*, 3 D. & L. 369.

2. The venue in an action for crim. con. was laid in Middlesex, and having been removed to Somersetshire, was brought back on the usual undertaking to give material evidence in *M*. It was proved at the trial that the plaintiff had taken lodgings at *S*. under an assumed name, and that the letter by which the landlady of the lodgings accepted his proposal to become her tenant was sent to him in *M*. at a hotel where he was stopping; that he afterwards wrote a letter bearing a post mark such as a letter sent from *M*. would bear while stopping at the hotel, directing his apartments in *S*. to be prepared; that the plaintiff's wife met the defendant at those lodgings in *S*., where the adultery was committed: *Held*, by Tindal, C. J., Maule, J., and Cresswell, J., (*Erle J.*, dissentiente,) that the evidence fulfilled the undertaking. *Held*, also, by the whole court, that it was not necessary to show that any part of the adultery had been committed in the county of Middlesex. *Quære*, whether the defendant was bound to

produce the undertaking at the trial in order to raise the objection as to the insufficiency of the evidence. *Clarke v. Dunsford*, 3 D. & L. 618.

Cases cited in the judgment: *Santler v. Heard*, 2 W. Bl. 1031; *Swaine's case*, 1 Sid. 405; *Lakson v. Mangles*, 2 M. & Rob. 427; *Guard v. Hodge*, 10 East, 32; *Clarke v. Reed*, 1 N. Rep. 310.

3. The 7 & 8 G. 4, c. 29, s. 34, enables the owner of a fishery or his servants to take into custody any person unlawfully fishing therein. The plaintiff was fishing near a spot where *P*. had a private right of fishery, when the servants of *P*. seized the plaintiff's net, and took him in custody, under a *bonds fide*, but mistaken belief that the plaintiff was fishing in the fishery of *P*. *Held*, that the defendants were entitled to the protection of the 7 & 8 G. 4, c. 29, and that the venue ought to have been laid in the county where the cause of action arose. *Hughes v. Buckland*, 3 D. & L. 702; *S. C.* 15 M. & W. 346.

Cases cited in the judgment: *Cann v. Clapper-ton*, 10 A. & E. 582; 2 P. & D. 560; *Hopkins v. Crowe*, 4 A. & E. 774; *Bush v. Green*, 4 Bing. N. C. 41; 5 Scott, 289.

VERDICT.

On the trial of a cause before the sheriff, under a writ of trial, a verdict was taken by consent of the parties, subject to a reference. Owing to the absence of the referee from town, the reference could not be gone into. The plaintiff accordingly gave notice that he abandoned the former verdict, and that he should proceed to try the cause *de novo*, which he accordingly did in the defendant's absence, and obtained a verdict: *Held*, that the second verdict was irregular, and must be set aside; and that the first ought not to stand, as it was subject to a reference, which had proved abortive, and which the sheriff had no power to order. *Harrison v. Greenwood*, 3 D. & L. 353.

Case cited in the judgment: *Wilson v. Thorpe*, 6 M. & W. 721.

WAIVER OF IRREGULARITY.

1. *Blanks in issue under Writ of Trial Act*.—Where the issue in an action to be tried before the sheriff has blanks for the teste and return of the writ of trial, the irregularity is waived, unless the objection be taken promptly.

And, where the defendant retained the issue for eight days, during which negotiations were going on, an application to set aside the issue and notice of trial for such irregularity was held to be too late. *Peart v. Hughes*, 2 C. B. 346.

2. *Particulars of set-off*.—An objection that pleas delivered by a defendant under terms to plead issuably are not issuable pleas, is waived by service of an order for particulars of set-off. *Quære*, whether service of the summons of such particulars was not an equally binding recognition of the pleas. *Scott v. Watson*, 1 C. B. 826.

WARRANT OF ATTORNEY.

1. *Attestation of execution*.—In the attestation of the execution of a warrant of attorney

or cognovit, under the 1 & 2 Vict. c. 110, s. 9, it is not necessary that the precise words of the statute should be followed: it is enough if it appears by necessary inference, that the witness attended as the attorney for the party, at his request, and that he subscribed his name as such attorney.

An attestation in the following form:—
“Signed, sealed, and delivered in the presence of E. F., attorney for the said C. D., and expressly named by him, and attending at his request. And I hereby subscribe myself to be the attorney for him, having read over and plained to him the nature and effect of the above warrant of attorney, before the same was executed by him; and I hereby subscribe my name as a witness to the due execution thereof.”
The signature was of the proper hand-writing of E. F., the attorney: *Held*, a sufficient compliance with the statute. *Lewis v. Lord Kensington*, 2 C. B. 463; S. C. 3 D. & L. 637.

Cases cited in the judgment: Poole v. Hobbs, 8 P. C. 113; Potter v. Nicholson, 8 M. & W. 294; Elkington v. Holland, 9 M. & W. 659; Dowl. N. S. 613; Everard v. Poppleton, 5 Q. B. 181; Hibbert v. Barton, 10 M. & W. 678; 2 Dowl. N. S. 434; Knight v. Hasty, 12 Law J., N. S., (Q. B. Bail Court, 9th May, 1843,) 293.

2. Where a charge of embezzlement was pending before a magistrate, who entertained doubts whether a partnership did not exist between the prosecutor and the accused party: *Held*, that a warrant of attorney given to secure the payment of monies charged to be embezzled, the charge afterwards withdrawn, was invalid; as at the time of giving it there was a charge of a criminal nature pending, which it was calculated to bring to an end. *Critchley, ex parte*, 3 D. & L. 527.

3. A joint warrant of attorney having been given by two defendants, and one of them having been transported for life, the court permitted judgment to be entered up against both, on an affidavit stating the conviction, and a certificate from the Home Office, certifying the transportation, and that no return of the convict's death had been made, and that by the practice of that office no return was made of a convict remaining alive; it being also sworn that the other defendant was still living. *Dalrymple v. Fraser*, 3 D. & L. 611.

4. Two persons executed a warrant of attorney, by which they authorized certain attorneys to appear “for us and each of us,” and to receive a declaration “for us and each of us in an action of debt,” &c., and to confess the same action, or else to suffer judgment, &c., to pass “against us,” and to be thereupon entered up, “against us and each of us,” and after the judgment shall be entered up as aforesaid, “for us, and in our names, and as our act and deed,” to execute a release of errors. On an application to enter up judgment against one of the defendants, the court held the warrant joint, and not joint and several, and therefore refused a rule for that purpose. *Dalrymple v. Fraser*, 3 D. & L. 618.

5. *Practice in signing judgment.*—*Laches.*—Where a warrant of attorney authorises judgment to be entered up “as of the term last past, then next, or any subsequent term,” a judgment entered up in vacation is regular (overruling *Cobbold v. Chilver*, 4 Scott, N. R. 678.) The assignees of a bankrupt seeking to take advantage of an irregularity in a judgment signed against the bankrupt, have only the same time within which to take advantage of it after their appointment, as the bankrupt himself would have, viz., from the time he “had” notice of the irregularity, so must apply promptly. *Atcock v. Satchliffe*, 33 L. O. 377.

WRIT OF SUMMONS.

Place of residence.—*Irregularity.*—A rule nisi will be granted to set aside the copy of the writ of summons and the service thereof, where the place of residence is stated in the writ to be in the wrong county, and different from that in which service has been made. *Eyton v. Taylor*, 33 L. O. 285.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Oldfield v. Cobbett. March 10th & 26th, 1847.

SECOND RE-HEARING.

The court will not, after the lapse of 5 or 6 years, rehear an appeal upon the grounds of irregularity in the Master's proceedings in expunging scandal without reporting it.

Mr. Teed applied, on behalf of the defendant, to set aside two orders of the Master of the Rolls, and the proceedings consequent thereupon. The first of these orders was made in reference to exceptions for scandal, and directed the master to expunge the same, if scandalous, and to tax the costs, &c. The Master, by his report, dated on the 24th and filed on the 28th of Jan., 1840, certified that he had found the matter scandalous, and had expunged it. By the 2nd order, dated March 30th, 1840, the Master of the Rolls ordered the costs of the above reference to be paid by the defendant, who was subsequently served with the usual subpoena, and a writ of attachment issued against him whilst in prison at the suit of the same plaintiff under a writ of commission of rebellion for not putting in an answer in a suit between the parties in the Court of Exchequer. Mr. Teed advanced two objections,—first, that the defendant could not be served with subpoena and attached for costs when in prison at the suit of the same plaintiff. *Hawkins v. Hall*, 4 Myl. & Cr. 280. Secondly, that the Master ought not to have expunged the alleged scandalous matter until he had reported it to be so, as the defendant was thereby deprived of his right to take exceptions to the report—see the latter part of the 22nd Order of December,

1833, which allows four days from the filing of the report.

Mr. *Renshaw*, for the plaintiff, read a long affidavit of the facts and proceedings in this cause, from which it appeared that the defendant had been served with the warrant to ex-punge on the 13th of Jan., 1840, and that on the 19th he had taken out a warrant to sustain the matter objected to, but had failed in supporting it. A similar motion to the present had been refused by Vice-Chancellor *Knight Bruce*, and the late Chancellor.

The Lord Chancellor said, that without giving any opinion on the alleged irregularity of the proceedings in the Master's office, he should not at this distance of time after the defendant had proceeded with the cause and it had been decided on appeal, allow a second rehearing. If the defendant was dissatisfied with the judgment of Lord Lyndhurst, he must appeal to the House of Lords.

Rolls Court.

Foreman v. Gray. Feb. 24, & March 23, 1847.

AMENDMENT OF BILL.—DELAY.

An order to amend obtained after a notice of a motion to dismiss, in a case where there had been great delay in getting in the answer of one of the defendants, discharged as an attempt to evade the orders of the court though within their strict letter.

THIS was a motion to discharge an order for leave to amend with costs, take the amendments off the file, and dismiss the original bill for want of prosecution. The facts of the case are summed up in his lordship's judgment on the present occasion, and are also stated in page 452, *ante*, upon the report of a previous motion made to discharge the order to amend for irregularity. Lord *Langdale* decided on that occasion that the order was not irregular; but the strong opinion expressed by his lordship as to its impropriety led to the renewal of the application in the present form, in which the technical objection of irregularity was abandoned, but it was contended that the obtaining of the order, under the circumstances of the case, was a fraud upon the court, and that therefore the court, by its discretionary power, would set it aside, notwithstanding its formal regularity.

Mr. *Elderton* for the motion.

Mr. *Heathfield* contra.

Lord *Langdale* said:—In this case the answer on which the motion was made was filed on the 15th of Dec., 1845; the ten weeks allowed for excepting to it expired on in the middle of March, 1846. The plaintiff was a *feme covert*, and the outstanding answer, which was held to give the plaintiff a right to the present order, was the answer of her husband. On the 17th of December last, a notice of a motion to dismiss was given. On the 21st, when the motion was to have been made, it was stopped by an order to amend, obtained as of course. Then a motion was made to dis-

charge that order for irregularity. If he could have construed the words "last answer," in the 66th Order of the Orders of May, 1845, and the corresponding section of the 16th Order, to mean the last answer filed at the time the motion was made, the order would have been irregular; but finding that there was an answer still outstanding, it appeared to him, perhaps erroneously, that the order, though obtained after gross delay, was not irregular. Now a motion was made to discharge that order upon the ground that it was improperly obtained in evasion of the general orders of the court. He had often had occasion, in causes not within his jurisdiction because attached to another branch of the court, to distinguish irregularity from what he must call impropriety of practice; but here, as the cause was attached to his own court, he was able to go into the circumstances of the case, which in other cases he was excluded from doing. Now, the granting a plaintiff further time where a defendant was in a situation to dismiss the bill, was an indulgence, and it seemed to him of importance that a defendant should not be easily defrauded of his right to move that the bill be dismissed. In the present case the plaintiff did not appear to him to make out any case for indulgence, and he thought it would be an injustice to the defendant to allow him at his own pleasure to begin a new course of litigation. If the plaintiff had appeared upon the motion to dismiss, and stated the facts of the case as an answer to it, he must have failed; he thought, therefore, that the motion must be granted, and the order to amend discharged. His lordship ultimately gave the plaintiff a week within which to get in the outstanding answer, otherwise the bill to be dismissed.

See *Arnold v. Arnold*, *ante*, p. 566.

Vice-Chancellor of England.

In re Brown. March 18th, 1847.

MORTGAGOR AND MORTGAGEE.—UNKNOWN HEIR.—CONSTRUCTION OF 11 G. 4, AND 1 W. 4, C. 60, 4 & 5 W. 4, C. 23, AND 1 & 2 VICT. C. 69.

Where the heir of a deceased mortgagee, to whose personal representative the mortgage money has been paid, is unknown, and a reconveyance is desired, the petition should be presented under the acts 11 G. 4, and 1 W. 4, c. 60, and 4 & 5 W. 4, c. 23, as the act 1 & 2 Vict. c. 69, does not apply.

THIS was a petition intitled in the acts 11 G. 4, and 1 W. 4, c. 60, and 4 & 5 W. 4, c. 21, and it prayed that some proper person might be appointed in the place of the unknown heir of a deceased mortgagee to convey the outstanding legal estate to the party entitled to the equity of redemption, the mortgage money having been paid to the mortgagee's executors.

Mr. *J. H. Palmer* appeared for the petitioner, and a question arose whether, since the act of 1 & 2 Vict. c. 69, cases of this description were within the provisions of the 11 G. 4, and 1 W.

4, c. 60, and 4 & 5 W. 4, c. 21. He referred to *In re Wilson*, 8 Sim. 395; *In re Williams*, 9 Sim. 426, 642; *In re Thompson*, 12 Sim. 392; and *Green v. Holden*, 1 Beav. 208.

The Vice-Chancellor said, he was of opinion the 1 & 2 Vict. c. 69, did not apply, and that there was no necessity for intituling the petition in that act. It was stated in the petition that there was an heir, but that it was not known who such heir was: the better plan in these cases, in order to bring them within the statutes, would be to state there was no heir.^a

Queen's Bench.

(Before the Four Judges.)

The Queen v. The Justices of London. Hilary Term, 1847.

MANDAMUS.—COSTS.

Where a court of quarter sessions dismissed an appeal on the ground, that according to the practice at sessions, the appeal had not been properly entered and respited at the previous sessions, the court made a rule absolute for a mandamus to the sessions to hear the appeal.

Held, (Wightman, J., dubitante,) that the appellants were entitled to the costs of the mandamus.

AN order of removal, made on the 25th November, 1845, was served, with the necessary documents, on the following day. No notice of appeal being given, the pauper was removed on the 22nd of December. At the next quarter sessions for the city of London, held January 10th, 1846, an appeal against the order was entered and respited. Notice of appeal was given on the 21st of March, and the appeal came on to be heard at the April quarter sessions, when they dismissed the appeal, being of opinion that the sessions in January had no jurisdiction to respite the appeal, because more than 35 days had elapsed between the receipt of notice of the order and the commencement of the January sessions. In Trinity Term, 1846, this court made a rule absolute for a mandamus to the mayor and justices of the city of London to enter continuances and hear the appeal.

In Michaelmas Term following a rule nisi was obtained calling upon the respondents to show cause why they should not pay the costs of the mandamus.

Mr. Payne showed cause. In *Rex v. The Justices of the North Riding*,^b the court held, that the justices were to judge of the reasonableness of the time. That case has certainly been followed by two cases,—*Rex v. The*

Justices of Buckinghamshire,^c and *Rex v. The Justices of Staffordshire*,^d which seem to establish a different rule of practice. In a case, therefore, where there are conflicting decisions, where the objection was not of a frivolous character, and where the mistake arose from an error of judgment in a court presided over by the Recorder of London, this court, in the exercise of its discretion, will not be disposed to make the respondents pay the costs of this mandamus.

Mr. Pughley, contra, contended, that there was nothing in this case to take it out of the general rule of practice.

Lord Denman, C. J. I think there is nothing in this case to take it out of the ordinary course of practice, this rule therefore will be made absolute.

Mr. Justice Coleridge concurred.

Mr. Justice Wightman. I have had some difficulty in coming to the conclusion that this rule ought to be made absolute, inasmuch as the error committed arose from a mistake of the court of quarter sessions. I do not lay down any rule on the subject, for the court, in the exercise of its discretion, must be guided by the particular facts of each case.

Rule absolute.

APPLICATIONS FOR TAKING OUT AND RENEWAL OF CERTIFICATES,

On the last day of Easter Term, 1847.

Queen's Bench.

Atherton, Isaac, Liverpool.
Ashford, Daniel Henry, Shepton Mallett.
Baldock, Henry, Norwood.
Bulmer, George, Dulwich; Parliament Street; and Belle Vue, Chelsea.
Cobb, Edward, Banbury.
Coates, Thomas, 42, Bedford Square; and Parliament Street.
Downer, William, Reading; and George St., Mansion House.
Hall, Thomas, Exmouth.
Ley, William, 45, Davies St., Berkeley Sq.; Berners St.; and Devon.
Matthews, Edwin David Thomas, Bootle, near Liverpool; and Canterbury Street, Lambeth.
Osmond, George, Bicester.
Parr, John Barton, Newcastle-upon-Tyne.
Ramshay, George, Brampton.
Reynolds, Thomas John, 45, Davies Street, Berkeley Square; Delahay Street; and Adam Street.
Taylor, David Passmore, 6, Harp Lane; and Maidstone.
Whicher, William, Chichester.
Welch, Charles Hewett, Ashbourne.
Wilson, Thomas, Lancaster.

^a Is that necessary? The 8th section of the 11 G. 4, and 1 W. 4, c. 60, having expressly provided for cases where the heir of a trustee is not known, and it having been held that mortgagees are within the meaning of that section, it is submitted that the statement of the actual fact of the heir being unknown is sufficient.—Ed.

the 10th day of May, 1847, in Vacation after Easter Term.

Bentley, Greenwood, jun. late of Bradford, now of Somerdale, near Astrigg, Yorkshire.*

Browne, Eyles Irwin C., Kidderminster; Darlington; and Cheltenham.

Balderstone, Alexander, 36, Arundel Street, Strand.

Cavell, Edmund, Saxmundham.

Farmer, George Noble, 9, St. Swithin's Lane; Tewkesbury; Chelsea; and Southgate Place, Islington.

Griffiths, Henry, 21, Goulden Terrace, Islington; and Amwell Street.

Giles, William, Shepton Market.

Hall, James Turbutt, 15, Tavistock Terrace, Upper Holloway; Gerrard St.; Islington; and Hermes St.

Jaques, John, jun., 8, Ely Place, Holborn.

Kirkpatrick, John Seaton West, Kingston-upon-Hull.

Pearce, John Thomas, jun., 40, Westmoreland Place, City Road; Lamb's Conduit Place; and Great James St. Bedford Row.

Pyne, William, 4, Inner Temple Lane; 15, Warwick Court, Gray's Inn; Cradley; and George Street, Hanover Square.

Taylor, Henry William, Brixton Hill, Surrey; and 8, Furnival's Inn, Holborn.

Willatts, Frederick George, 13, Gray's Inn Square.

Walker, John, Axbridge.

Willins, George, 1, Trigg Lane, Upper Thames Street.

Notices of Application to a Judge at Chambers for taking out Certificates on the 15th day of May, 1847, in Vacation after Easter Term, pursuant to Judges' Orders.

Hodgson, Joseph, Bradford.

Jennings, John Rogers, 71, Whitechapel Road; and Wanstead.

COMMON LAW CAUSE LIST.

Crown Paper.

Easter Term, 1847.

The Queen v. The Inhabitants of Mile End, Old Town.

The Queen v. The Inhabitants of Crondall, Hants.

The Queen v. The Inhabitants of Bangor, (orders.)

The Queen v. The Inhabitants of Martin-cum-Grafton.

The Queen v. The Inhabitants of Landkey.

The Queen v. The Great Western Railway Company.

The Queen v. The Great Western Railway Company.

The Queen v. The Inhabitants of Clixby.

The Queen v. Nathaniel Shipperbottom.

The Queen v. The Churchwardens, &c., of St.

George the Martyr, Southwark.

The Queen v. The Churchwardens, &c., of St. George the Martyr, Southwark.

The Queen v. The Inhabitants of Hartbury.

The Queen v. Thomas Collins.

The Queen v. The Inhabitants of Halesowen.

The Queen v. The Overseers of Oldham Union.

The Queen v. The Justices of the West Riding of Yorkshire.

The Queen v. William Richardson.

The Queen v. Archibald Douglas, Esq.

The Queen v. Thomas Phillips and another, Justices, &c.

The Queen v. The Inhabitants of Alderley.

The Queen v. Thomas Grimshaw.

The Queen v. The Inhabitants of Rhoscelyn.

The Queen v. The Inhabitants of Shalford.

The Queen v. The Inhabitants of St. Giles-in-the-Fields.

The Queen v. The Inhabitants of St. George, Bloomsbury.

The Queen v. The Inhabitants of Stainforth.

The Queen v. the Inhabitants of Mylor.

The Queen v. The Inhabitants of St. Clement Danes.

The Queen v. The Inhabitants of Dukinfield.

The Queen v. The Inhabitants of Leeds.

The Queen v. William Belton.

The Queen v. Charles Saffrey.

The Queen v. Morris Myers.

The Queen v. The Churchwardens, &c., of Aslee, Hants.

The Queen v. The Inhabitants of Hammersmith.

The Queen v. Joseph Thompson.

The Queen v. Joseph Thompson.

The Queen v. The Inhabitants of Macclesfield.

The Queen v. John Keen. Order of P. L., auditor.

The Queen v. The Inhabitants of Holywell.

The Queen v. Henry Nicholls

The Queen v. The Commissioners for improving, &c. the Town of Dudley.

The Queen v. Thos. Turk.

The Queen v. James Lord.

The Queen v. The Inhabitants of St. Thomas, New Sarum.

The Queen v. Charles Wright and another.

John Keen v. The Queen in error.

The Queen v. The Inhabitants of Coningsby.

The Queen v. The Inhabitants of Carlton.

The Queen v. The Inhabitants of Addingham.

The Queen v. The Inhabitants of Colerne.

The Queen v. Reuben Hunt and others.

The Queen v. The Inhabitants of East Stonehouse.

The Queen v. The Inhabitants of Gomersal.

The Queen v. Rev. E. B. Shaw, clk.

The Queen v. The Commissioners of Stamps and Taxes.

The Queen v. Martin Irving, Esq.

The Queen v. Martin Irving, Esq.

The Queen v. The Inhabitants of St. Pancras, (M. A. Parsons and family.)

The Queen v. The Inhabitants of St. Pancras (S. M. Taylor and Family.)

The Queen v. The London and South Western Railway Company.

The Queen v. The Inhabitants of Monk Bretton.

* Common Pleas.

NISI PRIUS CAUSE LISTS.

REMANETS FOR EASTER TERM, 1847.

Queen's Bench.

Middlesex.

Sir R. Sidney Johnson, Son, and W. S. B. Hamer M. Fraser Addington and Co.	Cahill Rowe Davies Williams Bastone and another, ex- cutrix, &c.	S. J. Macdonald (stayed) Cope (stayed) S. J. Wilkinson (stayed) S. J. Whiteway (inj.)	Dt. Bolton Prom. Chester Prom. Howard Prom. Alardon and P.
Elderton and H. Johnson, Son, and W.	Fiddes Crowther, admor., &c. (inj.)	S. J. Wm. Toogood (inj.) Edwards and another, sur- viving executors.	Dt. Chadwick Prom. Campbell and A. Dt. Williamson and H. Sci. fa. Wadeson Dt. Helme and Johnson Pro. Lewis Ca. N. Bennett Prom. Lewis and L. Pro. Burrell
C. J. Jones Becke Jno. Lewis R. Comyn Hertslet and Co. Thomas M. Parker Richards and W.	The Queen Becke Moon (stayed) Boosey Pratt Clerk Walker, clk.	S. J. Craufurd S. J. Parish and another Connop S. J. Davidson Dance S. J. Hughes S. J. The London Assurance of Houses and Roads from Fire Granville Earl Granville Ward Bailey S. J. Samuel Beaumont Daniel Wetherrell, clk. Latter and another Robertson Gregory Dethick and another Baker S. J. Maskelyne Harrison Janes Clifton, an infant Brown and another Rapson Seward Hsley Bird Webb Burford Cussans S. J. Law Ryan Walsh Young Blunt Headland Hodsoll Page Buxter Rolleston	Cov. Lowless and Son Trial at Bar, Gatty and T. Trial at Bar, Gatty and Co. Pro. Carlon and H. Dt. Loughborough Ca. E. Isaacs Prom. Ashley Prom. G. & W. C. Smith Dt. Person Dt. Minet and S. Dt. Person Prom. W. Kennett Ca. Hughes and T. Covt. Watson and Son Dt. Kearsey and Co. Dt. C. O. Howro Ca. Mills Pro. Rickards and Co. Tres. F. Walthew Tres. King and A. Issua. Foord Tres. John Nokes Ca. Bartley and S. Prom. Webb Prom. T. A. Jones Ejt. Person Prom. Smith Prom. Reynolds Prom. Person Prom. Walker Prom. A. Haynes Prom. C. Champion Prom. J. W. Flower Prom. Braham Tres. Wright and Co. Ca. J. H. Webber
Edward Smith Edward Smith Ablett Hawkins and Co. Wickens C. Robson Hill Julius and Co. J. Fallows Bebb and R. C. B. Wilson R. K. Lane Same Person Ravenscroft T. G. Steadman Lewis J. Tinslay Same Hall Edward Vann John Long Walker Gabriel and M. Moseley Lacy and B. Makinson and S. Person Bower and Son John Bell Dolman and S. Chisholme J. Lewis Shearman W. and Dyne	Hilton Hilton Neal (inj.) Dudding and another Rowlands Shorthouse and another Hill (stayed) Julius and another Bassan Gifford Wade Clayards Giles and another Flower Powter Rossiter and wife (pauper) Lewis Luck Dear (pauper) Martindale Davis Standen Walker Helps Doe d. Rule Baily and another Watts and others Atkinson Hoof and others Honiball Feltham Bowman, admix. Alexander Daniels Shaw		

NEW CAUSES.

Tennant and H. Milton and Co. Marsden Cragg and J. Carlton and H. Norcutt Williamson Angell Same Orlebar Vickery John Hughes	The Queen Smithson, admix. &c. Carr Cowburn Cumming The Queen Rudd and others Wooley Cates Loaring, by next friend Gardiner and another Doe d. Blackstone & others	S. J. Straford Bothams Taylor S. J. Simpson and another Ince and others Bluck, clk. Milne and another Marks Smith and another Kennion Rawlins White	Indt. Price and B. Covt. Hutchison [Co. Tres. Oliverson, Lavie and Prom. Sharpe and Co. Prom. Turnley Lonsdale Dt. Jaques and E. Dt. Chadwick Ca. Holmes Dt. S. Winter Ca. F. Smith Eject. A. J. Lane.
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Williamson and H.	Bulmer	Miles and another	Tres. T. A. Jones
S. G. Rawlins	Rawlins	Smith	Prom. Hayton
W. S. Paine	Robbins	Randall	Prom. Fuller and S.
Hawkins and Co.	Dudding and another	Sherwin	Dt. Tilson and Co.
Jennings	Hitchcock	Baylis	Prom. Jones and Co.
J. L. Dale	The Queen	Broome	Indt. Rickards and W.
F. Hobler	The Queen	Gompertz and others	Indt. Smith and Co.
Dickson and O.	Doe d. Frost	Alderson and another	Eject. Dangerfield
Sargent	Brazier	Stredder and another	Ca. Graham
Mitton and Co.	Knapton	Correy	Prom. Hook
J. Lewis	Roberts	S. J. Back and others	Prom. Wilkinson and Co.
B. Mewburn	Moginie	Field, exor.	Dt. J. T. Grover
Melton	Rumball	S. J. Wells	Prom. Woodward
Beart	Parker	Fabroni	Trov. Lewis and L.
J. W. Dolman	Watkins	Lyne	Prom. Hyde and Co.
Dawes	Hay	S. J. Cox	Prom. Chambers
Clarke and Co.	The Queen	Alexander	Indt. Person
Wm. Black	Wale and wife	Johnson, sen., and another	Tres. Ashley
Waite	Haselden	Myers and another	Dt. Garry
Parkos	Atkinson	Liddiard	Dt. Edwards and W.
Same	Same	Foster	Prom. Dennes
A. Hynes	Nevile	Deacon	F. Issue, W. Hodgkinson
Warneford	Duke of Brunswick	S. J. Ghislin	Ca. H. Crocker
Parker	Brunel	Cook	Prom. Person.
Champion	Churchill	Erkstein	Prom. Heathfield
Gell and H.	Brotring	S. J. Bunn	Prom. Lewis and L.
G. W. F. Cook	Edwards	Marriott	C. Tudway
Philp	Cannan	Parker and others	Tres. Webber
Clarke and Co.	The Queen	Alexander	Indt. W. C. Gates
J. L. Jones	Sparrow	Petty and others	Ca. A. A. Walter
Dawes	The Queen	S. J. Moreau	Perjury, Hobler
Atkinson	The Queen	Lomax and another	Indt. Fitzpatrick.
Edward Govett	Stacy	Sieeking and others, as- signees, &c.	F. Iss. Dickson and O.
		Blacket	Ca. Grimaldi and Co.
F. T. Donne	Scott	S. J. The Justices of Devon	Boever and B.
Thomas Foller	The Queen	Morrison	Prom. Hindman and H.
T. M. Parker	Clerk	S. J. Hughes	Prom. Amory and Co.
Same	Same	Taylor	Tres. Person
W. Smith	Wallis	Macnamara	Dt. Rickards and W.
Wm. Whalley	Lindley and another	Higinbotham	Prom. Binns
Same	Backett	S. J. Hughes	Dt. Colley, Smith and Co.
Sargent	Wyld	S. J. King	Indt. Richardson
Blackford	The Queen	Harris and another	Tres. J. Humphrys
L. Norton	Carter	Silverlock	Ca. Newton and E.
John Bell	Houghton	Wood	Pro. Rickards and W.
Mawe	Dean	Gibbins	Dt. Bodman
Philp	Hitchins	Broome	Indt. Rickards and W.
J. L. Dale	The Queen	Hall	Pro. G. Bickley
H. T. Roberts	Butler		

CIRCUITS OF THE COMMISSIONERS. FOR THE RELIEF OF INSOLVENT DEBTORS.

Summer Circuits, 1847.

William John Law, Esq., Commissioner.

Norfolk, at the Castle of Norwich, Tuesday,
June 29.

At the City of Norwich on the same day, instead
of Wednesday, 30th June, as heretofore appointed.

PERPETUAL COMMISSIONER.

Appointed under the Fines and Recoveries Act.

Pidcock, Richard, of Woolwich, for Kent. April
6.

MASTERS EXTRAORDINARY IN CHAN- CERY.

*From March 23rd to April 16th, 1847, both inclusive,
with dates when gazetted.*

Canning, Walter, Handsworth. April 2.

Lingard, Richard, Boughey Monk, Maidstone and
Folkstone. April 13.

Oldham, Edmund, Stockport. April 2.

Smith, George Archer, Newcastle-upon-Tyne.
April 2.

Trevor, James, Bridgwater. April 9.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From March 23rd to April 16th, 1847, both inclusive, with dates when gazetted.

Cary, Samuel, and Robert Leonard, jun., Bristol, Attorneys. April 6.
Hamlin, Thomas, and John Isaac Perham, Redhill, Wrington, Attorneys and Solicitors. April 9.
Last, Henry, and Christopher Richard Norris Palmer, Ware, Attorneys and Solicitors. April 2.
Lyne, Edward, and John Taunton, jun., Liskeard, Attorneys and Solicitors. April 9.
Manser, David, and Thomas Jenner, Rye, Attorneys and Solicitors. March 26.
Phillips, Joseph, and Edward Francis Slack, Chippenham, Attorneys and Solicitors. April 13.
Prickett, Edward, and Henry Watson, Aylesbury, Attorneys and Solicitors. April 2.
Russell, William, and Charles Russell, Leamington Priors, Attorneys and Solicitors. April 13.
Stephen, Sir George, and Benjamin Walker Hutchinson, 3, Furnivals Inn, Attorneys and Solicitors. April 16.

PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

House of Lords.

NEW BILLS IN PROGRESS.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy, Abolishing Court of Review, and Reducing Number of Commissioners. (No. 2.) In Committee. Lord Brougham.

Commons Inclosure, No 2. For 2nd reading.

Annual Indemnity. For 3rd reading.

Insolvent Debtors. Lord Brougham.

Vexatious Actions. Lord Brougham.

House of Commons.

NEW BILLS IN PROGRESS.

City Small Debts Court. In Committee. Mr. Masterman.

Law of Railways. For 2nd reading. Mr. Strutt.

Agricultural Tenant-right. In Committee. Mr. Strutt.

Pious and Charitable Property. For 2nd reading. Lord J. Manners.

Rating Small Tenements. For 2nd reading. Mr. Waddington.

For the Speedy Trial and Punishment of Juvenile Offenders. For 2nd reading. Sir John Pakington.

To Encourage Life Insurance. Postponed. Mr. Godson.

Lunatic Asylums Regulation. Attorney-General.

Inclosure Act Amendment. Sir F. Thesiger.

Health of Towns. For 2nd reading. Lord Morpeth.

Towns Improvement Clauses. For 2nd reading.

Taxation of Costs on Private Bills. For 2nd reading. Mr. Hume.

Registration of Voters. For 2nd reading. Mr. Walpole.

Drainage of Lands. In Committee.

Highways. For 2nd reading. Sir George Grey.

Administration of the Poor Laws. Sir Geo. Grey.

TAXES ON ADMINISTERING JUSTICE.

MR. WATSON has renewed his motion for a select committee to inquire into and report to the house on the taxation of suitors in the courts of law and equity by the collection of fees, and the amount thereof, and the mode of collection; and the appropriation of fees in the courts of law and equity, and in all inferior courts, and in the courts of special and general sessions in England and Wales, and as to the salaries and compensations and fees received by officers and retired officers of those courts; and whether any and what means could be adopted, with a view of superintending and regulating the collection and appropriation thereof. The motion will be made on Tuesday, 4th May.

THE EDITOR'S LETTER BOX.

IN closing our 33rd volume, we have to return our cordial thanks to our subscribers in general for their continued support, and to our numerous correspondents in particular, for their frequent communications of valuable information,—not forgetting the useful hints we occasionally receive for the still further improvement of the plan of the work, and the various topics comprised therein.

Within the compass of two large volumes annually will now be found *every new statute*, whether of the greatest or least importance to the profession, with ample notes and comments on the alterations thereby effected;—*every decision* of any importance in every court, comprised either in our original Reports or in the Analytical Digest;—*every projected change*, whether legislative or judicial;—all parliamentary reports and returns;—and in short, every species of information which the profession ought to possess.

Throughout the present volume, every number has contained a section of the Digest, and (with two exceptions, on Pleadings and Practice) each has been complete in itself. The Table of Contents, Titles, and Names of Cases, afford a ready reference to every article.

The letters of "A Practitioner," N. G.; E. H.; and M. W., shall be attended to; but we cannot agree in the views of "Practitioner,"

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